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7 Kevin Beiser; John Lee Evans; Michael
McQuary; Sharon Whitehurst-Payne;
8 Cynthia Marten

9 **UNITED STATES DISTRICT COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 CITIZENS FOR QUALITY
EDUCATION SAN DIEGO, an
13 unincorporated nonprofit association;
SAN DIEGO ASIAN AMERICANS
14 FOR EQUALITY FOUNDATION, a
nonprofit public-benefit corporation;
15 SCOTT HASSON individually and as
next friend on behalf of his minor child,
16 C.H.; CHAOYIN HE, individually and
as next friend on behalf of her minor
17 child, B.H.; XUEXUN HU, individually
and as next friend on behalf of his
18 minor child, R.H.; KEVIN STEEL and
MELISSA STEEL, individually and as
19 next friends on behalf of their minor
child, K.S.; JOSE VELAZQUEZ,
20 individually and as next friend on
behalf of his minor child, J.V.,

21 Plaintiffs,

22 v.

23 SAN DIEGO UNIFIED SCHOOL
24 DISTRICT; RICHARD BARRERA, in
his official capacity as Board President;
25 KEVIN BEISER, in his official
capacity as Board Vice President;
26 JOHN LEE EVANS, in his official
capacity as Board member; MICHAEL
27 MCQUARY in his official capacity as
Board member; SHARON
28 WHITEHURST-PAYNE, in her official

Case No. 17CV1054 BAS JMA

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Judge: Hon. Cynthia Bashant
Magistrate Judge: Hon. Jan M. Adler
Trial Date: Not Set

1 capacity as Board member; CYNTHIA
2 MARTEN, in her official capacity as
Superintendent ,

3 Defendants.

4
5 Defendants Richard Barrera; Kevin Beiser; John Lee Evans; Michael
6 McQuary; Sharon Whitehurst-Payne; Cynthia Marten (hereinafter “Defendants”)
7 answer Plaintiffs’ First Amended Complaint (“Complaint”) as follows:

8 **INTRODUCTION**

9 1. Defendants deny the allegations of paragraph 1, except as follows:
10 between July 26, 2016 and July 25, 2017, San Diego Unified School District
11 (“SDUSD”) worked with the Council on American-Islamic Relations (“CAIR”) to
12 develop a plan to address Islamophobia, bullying of Muslim students, and
13 discrimination against Muslim students and their families. The case law quotation
14 only contains conclusions of law, and no response is required.

15 2. Defendants deny the allegations of paragraph 2.

16 3. Because paragraph 3 of the Complaint only contains conclusions of
17 law, no response is required.

18 4. Paragraph 4 requires no response from Defendants.

19 **JURISDICTION AND VENUE**

20 5. Because paragraph 5 of the Complaint only contains conclusions of
21 law, no response is required.

22 6. Because paragraph 6 of the Complaint only contains conclusions of
23 law, no response is required.

24 7. Paragraph 7 of the Complaint contains conclusions of law to which no
25 response is required, except as follows: a substantial part of the events alleged in the
26 Complaint occurred in San Diego County.

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PLAINTIFFS

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2 8. Defendants are without sufficient knowledge or information to form a
3 belief as to the allegations of paragraph 8 and, on that basis, deny such allegations.

4 9. Defendants are without sufficient knowledge or information to form a
5 belief as to the allegations of paragraph 9 and, on that basis, deny such allegations.

6 10. Defendants are without sufficient knowledge or information to form a
7 belief as to the allegations of paragraph 10 and, on that basis, deny such allegations.

8 11. Defendants are without sufficient knowledge or information to form a
9 belief as to the allegations of paragraph 11 and, on that basis, deny such allegations.

10 12. Defendants are without sufficient knowledge or information to form a
11 belief as to the allegations of paragraph 12 and, on that basis, deny such allegations.

12 13. Defendants are without sufficient knowledge or information to form a
13 belief as to the allegations of paragraph 13 and, on that basis, deny such allegations.

14 14. Defendants are without sufficient knowledge or information to form a
15 belief as to the allegations of paragraph 14 and, on that basis, deny such allegations.

DEFENDANTS

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17 15. No response is required to this paragraph, as per the Court’s Order
18 Granting Joint Motion, SDUSD has been dismissed as a defendant in this matter.
19 (ECF No. 19.)

20 16. Defendants deny the allegations of paragraph 16, except as follows:
21 Defendant Barrera was President of the SDUSD Board of Education (“Board”) from
22 December 2016 to December 2017. The Board is SDUSD’s governing body and
23 acts pursuant to its bylaws.

24 17. Defendants deny the allegations of paragraph 17, except as follows:
25 Defendant Beiser was Vice President of the Board from December 2016 to
26 December 2017.

27 18. Defendants deny the allegations of paragraph 18, except as follows:
28 Defendant Lee Evans has been a member of the Board from 2008 to present.

1 19. Defendants deny the allegations of paragraph 19, except as follows:
2 Defendant McQuary has been a member of the Board from 2014 to present.

3 20. Defendants deny the allegations of paragraph 20, except as follows:
4 Defendant Whitehurst-Payne has been a member of the Board from 2016 to present.

5 21. Defendants deny the allegations of paragraph 21, except as follows:
6 Defendant Marten has been the Superintendent of SDUSD from 2013 to present. As
7 Superintendent, Marten is the Chief Executive Officer of SDUSD and secretary of
8 the Board.

9 **STATEMENT OF FACTS**

10 **I. Bullying & Discrimination.**

11 22. Defendants deny the allegations of paragraph 22, except as follows:
12 SDUSD's Bullying and Intimidation policy requires, in part, that staff members
13 report incidents of bullying and/or intimidation involving students, including
14 incidents of religiously motivated bullying, to the site principal/administrator,
15 designee, or Quality Assurance Office and requires the principal/administrator or
16 designee to complete a report and forward it to the Quality Assurance Office. The
17 allegations of this paragraph regarding California law contain conclusions of law
18 and no response is required.

19 23. Defendants deny the allegations of paragraph 23, except as follows:
20 SDUSD uses the definition of "bullying" from Section 48900 of the California
21 Education Code in its Bullying and Intimidation Policy.

22 24. Defendants admit the allegations of paragraph 24.

23 25. Defendants admit that the cited statute states, in part, the quoted
24 material contained in paragraph 25.

25 26. Defendants admit the allegations of paragraph 26.

26 27. Defendants admit the allegations of paragraph 27.

27 28. Defendants admit the allegations of paragraph 28.

28 29. Defendants admit the allegations of paragraph 29.

1 30. Defendants deny the allegations of paragraph 30, except as follows: at a
2 Board meeting on July 26, 2016, the Board unanimously approved a motion to
3 direct Defendant Marten to bring back to the Board a plan to address Islamophobia
4 and the reports of bullying of Muslim students.

5 **II. Pretext for the Anti-Islamophobia Initiative.**

6 31. Paragraph 31 requires no response from Defendants.

7 32. Paragraph 32 requires no response from Defendants.

8 33. Defendants deny the allegations of paragraph 33, except as follows: the
9 Board did listen to members of the community who spoke about bullying of Muslim
10 students.

11 34. Defendants admit that the cited article states, in part, the quoted
12 material contained in paragraph 34.

13 35. Defendants are without sufficient knowledge or information to form a
14 belief as to the allegations of paragraph 35 and, on that basis, deny such allegations.

15 36. Defendants deny the allegations of paragraph 36, except as follows: this
16 report was included in materials presented to the Board.

17 37. Defendants deny the allegations of paragraph 37.

18 38. Defendants admit that the report contains, in part, the quoted language
19 in paragraph 38.

20 39. Defendants admit that the report contains, in part, the statements
21 contained in paragraph 39.

22 40. Defendants deny the allegations of paragraph 40.

23 41. Paragraph 41 requires no response from Defendants.

24 42. Defendants deny the allegations of paragraph 42.

25 43. Defendants deny the allegations of paragraph 43.

26 44. Defendants are without sufficient knowledge or information to form a
27 belief as to the allegations of paragraph 44 and, on that basis, deny such allegations.

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1 45. Defendants are without sufficient knowledge or information to form a
2 belief as to the allegations of paragraph 45 and, on that basis, deny such allegations,
3 except as follows: the document linked in footnote two of the Complaint purports to
4 be a report released by the Anti-Defamation League titled “ADL Audit: U.S. Anti-
5 Semitic Incidents Surged in 2016-17.”

6 46. Defendants are without sufficient knowledge or information to form a
7 belief as to the allegations of paragraph 46 and, on that basis, deny such allegations.

8 47. Defendants deny the allegations of paragraph 47, except as follows: the
9 Board did not give specific instruction to SDUSD officials to develop an anti-
10 Semitism bullying prevention initiative. However, on July 25, 2017, the Board
11 commissioned an intercultural committee to look at preventing bullying across all
12 religions.

13 48. Defendants are without sufficient knowledge or information to form a
14 belief as to the allegations of paragraph 48 and, on that basis, deny such allegations,
15 except as follows: the document linked in footnote three of the Complaint purports
16 to be an August 2016 report released by the Asian American and Pacific Islander
17 Bullying Prevention Task Force documenting the bullying and harassment of Asian
18 American students from 2014-2016.

19 49. Defendants deny the allegations of paragraph 49, except as follows: the
20 Board did not give specific instruction to SDUSD officials to develop a religion-
21 based Asian American bullying prevention initiative. However, on July 25, 2017,
22 the Board commissioned an intercultural committee to look at preventing bullying
23 across all religions.

24 **III. The Anti-Islamophobia Initiative’s Policies, Practices & Procedures**

25 50. Defendants admit the allegations of paragraph 50.

26 51. Defendants admit the allegations of paragraph 51.

27 52. Defendants deny the allegations of paragraph 52, except as follows: the
28 Board approved SDUSD’s plan to address Islamophobia and discrimination against

1 Muslim students and their families in alignment with Assembly Bill No. 2845 on
2 April 4, 2017.

3 53. Defendants deny the allegations of paragraph 53, except as follows: the
4 Board did approve the “Immediate Action Steps” listed in Paragraphs 53a through
5 53e without the added emphasis.

6 54. Defendants deny the allegations of paragraph 54, except as follows: the
7 Board did approve the “Action Steps: Before the start of the 2017-18 school year”
8 listed in Paragraphs 54a through 54c without the added emphasis.

9 55. Defendants deny the allegations of paragraph 55, except as follows: the
10 Board did approve the “Steps over multiple years” listed in Paragraphs 55a through
11 55d without the added emphasis.

12 56. Defendants deny the allegations of paragraph 56, except as follows: the
13 Board did approve the “Student empowerment” steps listed in Paragraphs 56a
14 through 56c without the added emphasis.

15 57. Defendants deny the allegations of paragraph 57, except as follows: the
16 Board did approve the “Parent and Community Support” steps listed in Paragraphs
17 57a through 57c without the added emphasis.

18 58. Defendants deny the allegations of paragraph 58, except as follows: in
19 board meetings in April 2017, the Board heard from community members regarding
20 their reaction to the Board’s decision on April 4, 2017.

21 59. Defendants deny the allegations of paragraph 59, except as follows:
22 Plaintiffs’ counsel sent a letter to Defendants dated April 27, 2017, informing them
23 that SDUSD’s collaboration with CAIR to combat Islamophobia and bullying of
24 Muslim students raised serious constitutional concerns.

25 60. Defendants deny the allegations of paragraph 60, except as follows: the
26 April 27, 2017 letter recommended that Defendants rescind the vote to combat
27 Islamophobia and pursue another approach that does not implicate serious
28 constitutional questions.

1 61. Defendants deny the allegations of paragraph 61.

2 **IV. The Council on American-Islamic Relations.**

3 62. Defendants deny the allegations of paragraph 62, except as follows:
4 SDUSD has maintained a relationship with CAIR similar to the relationship which it
5 has maintained with other community organizations.

6 63. Defendants admit that CAIR's website makes the statement contained
7 in paragraph 63.

8 64. Defendants admit that CAIR's website makes the statement contained
9 in paragraph 64.

10 65. Defendants admit that CAIR's website makes the statement contained
11 in paragraph 65.

12 66. Defendants deny the allegations of paragraph 66, except as follows:
13 CAIR's website states that CAIR conducts and organizes lobbying efforts on issues
14 related to Islam and Muslims.

15 67. Defendants deny the allegations of paragraph 67, except as follows:
16 CAIR's website states that CAIR provides workshops to educators as a proactive
17 approach that highlights relevant Islamic practices and offers suggestions for
18 religious accommodation.

19 68. Defendants are without sufficient knowledge or information to form a
20 belief as to the allegations of paragraph 68 and, on that basis, deny such allegations.

21 69. Defendants are without sufficient knowledge or information to form a
22 belief as to the allegations of paragraph 69 and, on that basis, deny such allegations.

23 70. Defendants are without sufficient knowledge or information to form a
24 belief as to the allegations of paragraph 70 and, on that basis, deny such allegations.

25 71. Defendants are without sufficient knowledge or information to form a
26 belief as to the allegations of paragraph 71 and, on that basis, deny such allegations.

27 72. Stricken by Order of the Court.

28 73. Stricken by Order of the Court.

1 74. Stricken by Order of the Court.

2 75. Stricken by Order of the Court.

3 76. Stricken by Order of the Court.

4 77. Stricken by Order of the Court.

5 78. Stricken by Order of the Court.

6 79. The document linked in footnote nine of the Complaint purports to be a
7 report released by the Anti-Defamation League entitled “Imagine a World Without
8 Hate” and “Profile: The Council on American Islamic Relations” which contains, in
9 part, the quoted language in Paragraphs 79a and 79b. Paragraph 79c was stricken by
10 order of the court.

11 **V. The School District’s Multifarious Relationships with CAIR-SD**

12 80. Defendants are without sufficient knowledge or information to form a
13 belief as to the allegations of paragraph 80 and, on that basis, deny such allegations.

14 81. Defendants deny the allegations of paragraph 81, except as follows:
15 CAIR has provided training on anti-bullying.

16 82. Defendants deny the allegations of paragraph 82, except as follows:
17 CAIR and SDUSD’s Race/Human Relations and Advocacy Department entered into
18 an informal partnership which included the planned partnership activities listed in
19 Paragraphs 82a through 82c.

20 83. Defendants deny the allegations of paragraph 83, except as follows: the
21 Partnership Agreement included, in part, the quoted material contained in Paragraph
22 83.

23 84. Defendants deny the allegations of paragraph 84, except as follows: the
24 Board attended a training on March 27, 2012, one of the objectives of which was to
25 introduce partnerships that provide training on Islamophobia to the Board.

26 85. Defendants deny the allegations of paragraph 85, except as follows: a
27 book entitled “Teaching Against Islamophobia” was displayed as part of the March
28 27, 2012 workshop.

1 86. Defendants are without sufficient knowledge or information to form a
2 belief as to the allegations of paragraph 86 and, on that basis, deny such allegations.

3 87. Defendants are without sufficient knowledge or information to form a
4 belief as to the allegations of paragraph 87 and, on that basis, deny such allegations.

5 88. Defendants deny the allegations of paragraph 88, except as follows:
6 Defendant Beiser and Defendant McQuary presented a Proclamation on November
7 10, 2015 on behalf of the Board In Support and Recognition of Council on
8 American-Islamic Relations, San Diego Chapter, and it contains, in part, the quoted
9 material in paragraphs 88a through 88d without the added emphasis.

10 89. Defendants deny the allegations of paragraph 89.

11 90. Defendants are without sufficient knowledge or information to form a
12 belief as to the allegations of paragraph 90 and, on that basis, deny such allegations.

13 91. Defendants admit the allegations of paragraph 91.

14 92. Defendants are without sufficient knowledge or information to form a
15 belief as to the allegations of paragraph 92 and, on that basis, deny such allegations,
16 except as follows: the document linked in footnote 14 of the Complaint purports to
17 be a webpage from Launchgood.com where CAIR solicited donations to Sponsor
18 Anti-Bullying workshop at K-12 schools with the description quoted in this
19 paragraph without the added emphasis.

20 93. Defendants are without sufficient knowledge or information to form a
21 belief as to the allegations of paragraph 93 and, on that basis, deny such allegations.

22 94. Defendants are without sufficient knowledge or information to form a
23 belief as to the allegations of paragraph 94 and, on that basis, deny such allegations.

24 95. Defendants are without sufficient knowledge or information to form a
25 belief as to the allegations of paragraph 95 and, on that basis, deny such allegations.

26 96. Defendants admit that the document linked in footnote 15 of the
27 Complaint contains the language quoted in paragraph 96.

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1 97. Defendants admit that the document linked in footnote 15 of the
2 Complaint contains the language quoted in paragraph 97.

3 98. Defendants admit that the document linked in footnote 15 of the
4 Complaint lists the items included in paragraph 98 for purchase.

5 99. Defendants deny the allegations of paragraph 99, except as follows:
6 CAIR representatives provided anti-bullying training to seventh and eighth grade
7 students at Logan Elementary School on February 2, 2017.

8 100. Defendants are without sufficient knowledge or information to form a
9 belief as to the allegations of paragraph 100 and, on that basis, deny such
10 allegations.

11 101. Defendants deny the allegations of paragraph 101.

12 102. Paragraph 102 does not require a response.

13 103. Defendants deny the allegations of paragraph 103, except as follows:
14 CAIR representatives distributed pamphlets entitled “Know Your Rights as a
15 Muslim Youth in School.”

16 104. The document linked in footnote 16 of the Complaint contains the
17 quoted statement in Paragraph 104 without the added emphasis.

18 105. The document linked in footnote 16 of the Complaint contains the
19 heading in Paragraph 105.

20 106. The document linked in footnote 16 of the Complaint contains the
21 quoted statements in Paragraph 106 without the added emphasis.

22 107. Defendants are without sufficient knowledge or information to form a
23 belief as to the allegations of paragraph 107 and, on that basis, deny such
24 allegations, except as follows: CAIR-CA’s website contains a webpage entitled
25 “Report An Incident.”

26 108. Defendants admit the allegations of paragraph 108.

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1 109. Defendants are without sufficient knowledge or information to form a
2 belief as to the allegations of paragraph 109 and, on that basis, deny such
3 allegations.

4 110. Defendants are without sufficient knowledge or information to form a
5 belief as to the allegations of paragraph 110 and, on that basis, deny such
6 allegations.

7 111. Defendants are without sufficient knowledge or information to form a
8 belief as to the allegations of paragraph 111 and, on that basis, deny such
9 allegations.

10 112. Defendants are without sufficient knowledge or information to form a
11 belief as to the allegations of paragraph 112 and, on that basis, deny such
12 allegations.

13 113. Defendants admit that CAIR-SD's website contains the referenced
14 press release that contains, in part, the quoted material in Paragraphs 113a through
15 113c without the added emphasis.

16 114. Defendants are without sufficient knowledge or information to form a
17 belief as to the allegations of paragraph 114 and, on that basis, deny such
18 allegations.

19 115. Defendants are without sufficient knowledge or information to form a
20 belief as to the allegations of paragraph 115 and, on that basis, deny such
21 allegations.

22 116. Defendants admit the allegations in paragraph 116.

23 117. Defendants admit that SDUSD's website contains the quoted material
24 in paragraph 117 without the added emphasis.

25 118. Defendants deny the allegations of paragraph 118.

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1 **VI. Plaintiffs' Allegations.**

2 119. Defendants are without sufficient knowledge or information to form a
3 belief as to the allegations of paragraph 119 and, on that basis, deny such
4 allegations.

5 120. Defendants are without sufficient knowledge or information to form a
6 belief as to the allegations of paragraph 120 and, on that basis, deny such
7 allegations.

8 121. Defendants deny the allegations of paragraph 121.

9 122. Defendants deny the allegations of paragraph 122.

10 123. Defendants deny the allegations of paragraph 123.

11 124. Defendants are without sufficient knowledge or information to form a
12 belief as to the allegations of paragraph 124 and, on that basis, deny such
13 allegations.

14 125. Defendants deny the allegations of paragraph 125.

15 126. Defendants deny the allegations of paragraph 126.

16 127. Defendants deny the allegations of paragraph 127.

17 128. Defendants deny the allegations of paragraph 128.

18 129. Defendants are without sufficient knowledge or information to form a
19 belief as to the allegations of paragraph 129 and, on that basis, deny such
20 allegations.

21 130. Defendants are without sufficient knowledge or information to form a
22 belief as to the allegations of paragraph 130 and, on that basis, deny such
23 allegations.

24 131. Defendants deny the allegations of paragraph 131.

25 132. Defendants deny the allegations of paragraph 132.

26 133. Defendants deny the allegations of paragraph 133.

27 134. Defendants deny the allegations of paragraph 134.

28 135. Defendants deny the allegations of paragraph 135.

1 136. Defendants deny the allegations of paragraph 136.

2 137. Defendants are without sufficient knowledge or information to form a
3 belief as to the allegations of paragraph 137 and, on that basis, deny such
4 allegations.

5 138. Defendants deny the allegations of paragraph 138.

6 139. Defendants deny the allegations of paragraph 139.

7 140. Defendants deny the allegations of paragraph 140.

8 141. Defendants deny the allegations of paragraph 141.

9 142. Defendants deny the allegations of paragraph 142.

10 143. Defendants deny the allegations of paragraph 143.

11 144. Defendants deny the allegations of paragraph 144.

12 145. Defendants deny the allegations of paragraph 145.

13 **FIRST CLAIM FOR RELIEF**

14 **VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE FIRST**
15 **AMENDMENT**

16 **(By All Plaintiffs)**

17 146. Defendants incorporate by reference their responses to Paragraphs 1-
18 145 of the Complaint, as though fully set forth herein.

19 147. Because paragraph 147 of the Complaint only contains conclusions of
20 law, no response is required.

21 148. Defendants deny the allegations of paragraph 148.

22 149. Defendants deny the allegations of paragraph 149.

23 150. Defendants deny the allegations of paragraph 150.

24 151. Defendants deny the allegations of paragraph 151.

25 152. Defendants deny the allegations of paragraph 152.

26 153. Defendants deny the allegations of paragraph 153.

27 154. Defendants deny the allegations of paragraph 154.

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1 155. Defendants deny the allegations of paragraph 155, except as follows:
2 per the Court’s Order Granting Joint Motion, the Complaint has been amended to
3 remove the claim for nominal damages. (ECF No. 19.)

4 **SECOND CLAIM FOR RELIEF**

5 **VIOLATION OF THE FREE EXERCISE CLAUSE OF THE FIRST**
6 **AMENDMENT**

7 **(By Plaintiffs Hasson, He, Hu, Steel, Steel & Velazquez)**

8 156. Defendants incorporate by reference their responses to Paragraphs 1-
9 155 of the Complaint, as though fully set forth herein.

10 157. Because paragraph 157 of the Complaint only contains conclusions of
11 law, no response is required.

12 158. Defendants deny the allegations of paragraph 158.

13 159. Defendants deny the allegations of paragraph 159.

14 160. Defendants deny the allegations of paragraph 160.

15 161. Defendants deny the allegations of paragraph 161.

16 162. Defendants deny the allegations of paragraph 162, except as follows:
17 per the Court’s Order Granting Joint Motion, the Complaint has been amended to
18 remove the claim for nominal damages. (ECF No. 19.)

19 **THIRD CLAIM FOR RELIEF**

20 **VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE**
21 **FOURTEENTH AMENDMENT**

22 **(By All Plaintiffs)**

23 163. Defendants incorporate by reference their responses to Paragraphs 1-
24 162 of the Complaint, as though fully set forth herein.

25 164. Because paragraph 164 of the Complaint only contains conclusions of
26 law, no response is required.

27 165. Defendants deny the allegations of paragraph 165.

28 166. Defendants deny the allegations of paragraph 166.

1 167. Defendants deny the allegations of paragraph 167.

2 168. Defendants deny the allegations of paragraph 168.

3 169. Defendants deny the allegations of paragraph 169.

4 170. Defendants deny the allegations of paragraph 170, except as follows:
5 per the Court's Order Granting Joint Motion, the Complaint has been amended to
6 remove the claim for nominal damages. (ECF No. 19.)

7 **FOURTH CLAIM FOR RELIEF**

8 **VIOLATION OF THE NO PREFERENCE CLAUSE OF THE CALIFORNIA**
9 **CONSTITUTION**

10 **(By All Plaintiffs)**

11 171. Defendants incorporate by reference their responses to Paragraphs 1-
12 170 of the Complaint, as though fully set forth herein.

13 172. Because paragraph 172 of the Complaint only contains conclusions of
14 law, no response is required.

15 173. Defendants deny the allegations of paragraph 173.

16 174. Defendants deny the allegations of paragraph 174.

17 175. Defendants deny the allegations of paragraph 175.

18 176. Defendants deny the allegations of paragraph 176.

19 177. Defendants deny the allegations of paragraph 177.

20 178. Defendants deny the allegations of paragraph 178, except as follows:
21 per the Court's Order Granting Joint Motion, the Complaint has been amended to
22 remove the claim for nominal damages. (ECF No. 19.)

23 **FIFTH CLAIM FOR RELIEF**

24 **VIOLATION OF THE ESTABLISHMENT CLAUSE OF THE CALIFORNIA**
25 **CONSTITUTION**

26 **(By All Plaintiffs)**

27 179. Defendants incorporate by reference their responses to Paragraphs 1-
28 178 of the Complaint, as though fully set forth herein.

1 180. Because paragraph 180 of the Complaint only contains conclusions of
2 law, no response is required.

3 181. Defendants deny the allegations of paragraph 181.

4 182. Defendants deny the allegations of paragraph 182.

5 183. Defendants deny the allegations of paragraph 183.

6 184. Defendants deny the allegations of paragraph 184.

7 185. Defendants deny the allegations of paragraph 185.

8 186. Defendants deny the allegations of paragraph 186.

9 187. Defendants deny the allegations of paragraph 187, except as follows:
10 per the Court’s Order Granting Joint Motion, the Complaint has been amended to
11 remove the claim for nominal damages. (ECF No. 19.)

12 **SIXTH CLAIM FOR RELIEF**

13 **VIOLATION OF THE NO AID CLAUSE OF THE CALIFORNIA**
14 **CONSTITUTION**

15 **(By All Plaintiffs)**

16 188. Defendants incorporate by reference their responses to Paragraphs 1-
17 187 of the Complaint, as though fully set forth herein.

18 189. Because paragraph 189 of the Complaint only contains conclusions of
19 law, no response is required.

20 190. Defendants deny the allegations of paragraph 190.

21 191. Defendants deny the allegations of paragraph 191.

22 192. Defendants deny the allegations of paragraph 192.

23 193. Defendants deny the allegations of paragraph 193.

24 194. Defendants deny the allegations of paragraph 194, except as follows:
25 per the Court’s Order Granting Joint Motion, the Complaint has been amended to
26 remove the claim for nominal damages. (ECF No. 19.)

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SEVENTH CLAIM FOR RELIEF

VIOLATION OF THE UNRUH CIVIL RIGHTS ACT

(By Plaintiffs Hasson, He, Hu, Steel, Steel & Velazquez)

195. Defendants incorporate by reference their responses to Paragraphs 1-194 of the Complaint, as though fully set forth herein.

196. Because paragraph 196 of the Complaint only contains conclusions of law, no response is required.

197. Because paragraph 197 of the Complaint only contains conclusions of law, no response is required.

198. Defendants deny the allegations of paragraph 198

199. Defendants deny the allegations of paragraph 199.

200. Defendants deny the allegations of paragraph 200.

201. Defendants deny the allegations of paragraph 201, except as follows: per the Court’s Order Granting Joint Motion, the Complaint has been amended to remove the claim for nominal damages. (ECF No. 19.)

EIGHTH CLAIM FOR RELIEF

VIOLATION OF § 11135 OF THE CALIFORNIA GOVERNMENT CODE

(By All Plaintiffs)

202. Defendants incorporate by reference their responses to Paragraphs 1-201 of the Complaint, as though fully set forth herein.

203. Because paragraph 203 of the Complaint only contains conclusions of law, no response is required.

204. Defendants admit the allegations in paragraph 204.

205. Defendants deny the allegations of paragraph 205.

206. Defendants deny the allegations of paragraph 206.

207. Defendants deny the allegations of paragraph 207.

208. Defendants deny the allegations of paragraph 208.

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1 209. Defendants deny the allegations of paragraph 209, except as follows:
2 per the Court's Order Granting Joint Motion, the Complaint has been amended to
3 remove the claim for nominal damages. (ECF No. 19.)

4 **NINTH CLAIM FOR RELIEF**

5 **VIOLATION OF §§ 200 & 220 OF THE CALIFORNIA EDUCATION CODE**

6 **(By All Plaintiffs)**

7 210. Defendants incorporate by reference their responses to Paragraphs 1-
8 209 of the Complaint, as though fully set forth herein.

9 211. Because paragraph 211 of the Complaint only contains conclusions of
10 law, no response is required.

11 212. Defendants deny the allegations of paragraph 212.

12 213. Defendants deny the allegations of paragraph 213.

13 214. Defendants deny the allegations of paragraph 214.

14 215. Defendants deny the allegations of paragraph 215.

15 216. Defendants deny the allegations of paragraph 216, except as follows:
16 per the Court's Order Granting Joint Motion, the Complaint has been amended to
17 remove the claim for nominal damages. (ECF No. 19.)

18 **TENTH CLAIM FOR RELIEF**

19 **VIOLATION OF § 51500 OF THE CALIFORNIA EDUCATION CODE**

20 **(By All Plaintiffs)**

21 217. Defendants incorporate by reference their responses to Paragraphs 1-
22 216 of the Complaint, as though fully set forth herein.

23 218. Because paragraph 218 of the Complaint only contains conclusions of
24 law, no response is required.

25 219. Defendants deny the allegations of paragraph 219.

26 220. Defendants deny the allegations of paragraph 220.

27 221. Defendants deny the allegations of paragraph 221.

28 222. Defendants deny the allegations of paragraph 222.

1 223. Defendants deny the allegations of paragraph 223, except as follows:
2 per the Court's Order Granting Joint Motion, the Complaint has been amended to
3 remove the claim for nominal damages. (ECF No. 19.)

4 **ELEVENTH CLAIM FOR RELIEF**

5 **VIOLATION OF § 51501 OF THE CALIFORNIA EDUCATION CODE**
6 **(By All Plaintiffs)**

7 224. Defendants incorporate by reference their responses to Paragraphs 1-
8 223 of the Complaint, as though fully set forth herein.

9 225. Because paragraph 225 of the Complaint only contains conclusions of
10 law, no response is required.

11 226. Defendants deny the allegations of paragraph 226.

12 227. Defendants deny the allegations of paragraph 227, except as follows:
13 books suggested by CAIR were included as part of a Multicultural Text Set sent to
14 schools and materials from CAIR were provided to the Board.

15 228. Defendants deny the allegations of paragraph 228, except as follows:
16 books suggested by CAIR were included as part of a Multicultural Text Set sent to
17 schools and materials from CAIR were provided to the Board. Defendants are
18 without sufficient knowledge or information to form a belief as to the organizational
19 activities of CAIR.

20 229. Defendants deny the allegations of paragraph 229.

21 230. Defendants are without sufficient knowledge or information to form a
22 belief as to the allegations of paragraph 230 and, on that basis, deny such
23 allegations.

24 231. Defendants deny the allegations of paragraph 231.

25 232. Defendants deny the allegations of paragraph 232, except as follows:
26 per the Court's Order Granting Joint Motion, the Complaint has been amended to
27 remove the claim for nominal damages. (ECF No. 19.)

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TWELFTH CLAIM FOR RELIEF
VIOLATION OF §60044 OF THE CALIFORNIA EDUCATION CODE
(By All Plaintiffs)

233. Defendants incorporate by reference their responses to Paragraphs 1-232 of the Complaint, as though fully set forth herein.

234. Because paragraph 234 of the Complaint only contains conclusions of law, no response is required.

235. Defendants deny the allegations of paragraph 235.

236. Defendants deny the allegations of paragraph 236.

237. Defendants deny the allegations of paragraph 237, except as follows: books suggested by CAIR were included as part of a Multicultural Text Set sent to schools and materials from CAIR were provided to the Board. Defendants are without sufficient knowledge or information to form a belief as to the organizational activities of CAIR.

238. Defendants deny the allegations of paragraph 238.

239. Defendants deny the allegations of paragraph 239, except as follows: per the Court’s Order Granting Joint Motion, the Complaint has been amended to remove the claim for nominal damages. (ECF No. 19.)

AFFIRMATIVE DEFENSES

For a further and separate answer to the allegations contained in Plaintiffs’ Complaint, Defendants submit the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

(Statute of Limitations)

Plaintiffs’ Complaint is barred by the applicable statutes of limitation.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Claim)

Plaintiffs’ Complaint and all of its causes of action fail to state a claim upon which relief can be granted against Defendants.

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THIRD AFFIRMATIVE DEFENSE

(Deference to Academic Judgment)

Plaintiffs’ Complaint and all of its causes of action are barred, in part, by the principle of non-intervention into academic affairs, as the decisions at issue rested on *bona fide* academic judgments.

FOURTH AFFIRMATIVE DEFENSE

(Deference to Judgment of Board of Directors)

Plaintiffs’ Complaint and all of its causes of action are barred, in part, by the business judgment rule, as all applicable decisions by the Board of Education of SDUSD were good faith management decisions.

FIFTH AFFIRMATIVE DEFENSE

(Standing)

Plaintiffs’ Complaint and all of its causes of action fail to state a claim because plaintiffs lack standing to assert those claims.

SIXTH AFFIRMATIVE DEFENSE

(Mootness)

Plaintiffs’ Complaint and all of its causes of action are barred because the claims are moot.

SEVENTH AFFIRMATIVE DEFENSE

(Immunity)

Plaintiffs’ complaint, in whole or in part, is barred because Defendants are immune from liability.

EIGHTH AFFIRMATIVE DEFENSE

(Qualified Immunity)

Plaintiffs’ complaint, in whole or in part, is barred because Defendants enjoy qualified immunity.

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NINTH AFFIRMATIVE DEFENSE

(Laches)

Plaintiffs’ Complaint and all of the causes of action therein are barred by the doctrine of *laches*.

TENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiffs’ request for injunctive relief is barred by the doctrine of unclean hands.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust)

Plaintiffs’ eighth cause of action is barred by the failure to exhaust administrative remedies.

TWELFTH AFFIRMATIVE DEFENSE

(Unnecessary and Improper Claim for Declaratory Relief)

Plaintiffs’ request for Declaratory Relief is barred, in whole or in part, because it seeks relief that is not necessary or proper under all the circumstances.

THIRTEENTH AFFIRMATIVE DEFENSE

(Reservation of Rights)

Defendants presently have insufficient knowledge or information to know whether they may have additional, yet unasserted, affirmative defenses. Defendants reserve the right to assert additional affirmative defenses as deemed appropriate at a later time.

WHEREFORE, Defendants prays as follows:

1. Plaintiffs take nothing by way of their Complaint;
2. Plaintiffs’ Complaint be dismissed, with prejudice;
3. Defendants be awarded their costs of suit and attorneys’ fees to the

extent available under applicable law; and

///

1 4. Defendants be awarded such other and further relief as this Court
2 deems proper.

3
4 Dated: March 19, 2018

PAUL, PLEVIN, SULLIVAN &
CONNAUGHTON LLP

5
6 By: 

7 _____
8 MICHAEL C. SULLIVAN
9 JENNIFER M. FONTAINE
10 Attorneys for Defendants Richard Barrera;
11 Kevin Beiser; John Lee Evans; Michael
12 McQuary; Sharon Whitehurst-Payne;
13 Cynthia Marten
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PROOF OF SERVICE

Citizens for Quality Education San Diego et al. v. San Diego Unified School District et al.
Case No. 17cv01054-BAS JMA

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Diego, State of California. My business address is 101 West Broadway, Ninth Floor, San Diego, CA 92101-8285.

On March 19, 2018, I served true copies of the following document(s) described as **DEFENDANTS’ ANSWER TO PLAINTIFFS’ FIRST AMENDED COMPLAINT** on the interested parties in this action as follows:

Charles S. LiMandri
Paul M. Jonna
Teresa L. Mendoza
Jeffrey M. Trissell
Freedom of Conscience Defense Fund
P.O. Box 9520
Rancho Santa Fe, CA 92067
Telephone: (858) 759-9948
Facsimile: (858) 759-9938
E-Mail: cslimandri@limandri.com
Attorneys for Plaintiffs

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on March 19, 2018, at San Diego, California.



Amy R. Dickey