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

11  
12 **Citizens For Quality Education**  
13 **San Diego, *et al.*,**

14 Plaintiffs;

15 v.

16 **San Diego Unified School District, *et al.*,**

17  
18 Defendants.

Case No. 3:17-cv-1054-BAS (JMA)

**PLAINTIFFS' RESPONSES TO  
DEFENDANTS' EVIDENTIARY  
OBJECTIONS**

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

19 Plaintiffs submit the following responses to Defendants' various objections (ECF  
20 No. 55-1) to certain evidence (ECF No. 47-2) that Plaintiffs submitted with their Reply  
21 (ECF No. 47) in support of their Motion for Preliminary Injunction (ECF No. 26).  
22 Specifically, Defendants object to the following:

- 23 ○ Footnotes 18 and 40 in Plaintiffs' reply brief (ECF No. 47);
- 24 ○ Exhibits 65, 69, 71 in support of Plaintiffs' reply (ECF No. 47-2); and
- 25 ○ Index of Exhibits to Plaintiffs' reply (ECF No. 47-2)

26 Defendants' objections are without merit. Therefore, Plaintiffs respectfully request  
27 that the Court overrule them.

Number	Evidence	Response
1	Reply Br. 9 n. 18	<ul style="list-style-type: none"> <li>○ The Court granted leave for Defendants to object <i>only</i> to the exhibits included with Plaintiffs’ Reply. By objecting to this footnote, Defendants are circumventing this Court’s order and effectively moving the Court to <i>strike</i> this footnote, thereby violating the Court’s express order to “limit their reply to responding to Plaintiffs’ new exhibits. . . .” (ECF No. 54 at 3:37).</li> <li>○ In any event, Defendants’ objection to this evidence is unavailing. This webpage is already part of the record. Plaintiffs included a printout of the webpage as LiMandri Decl. Ex. 23 in support of Plaintiffs’ Motion for Preliminary Injunction.</li> <li>○ LiMandri’s declaration is sufficient to authenticate this webpage because it is made from personal knowledge, <i>i.e.</i> he “used” the website. <i>See Orr v. Bank of Am., NT &amp; SA</i>, 285 F.3d 764, 784 (9th Cir. 2002) (“A document can be authenticated [under Rule 901(b)(1)] by a witness who wrote it, signed it, <i>used it</i>, or <i>saw others do so</i>.” (emphasis added)).</li> <li>○ The website is also authenticated under FRE 901(b)(4) because it is circumstantial evidence. <i>See, e.g., United States v. Siddiqui</i>, 235 F.3d 1318, 1322 (11th Cir. 2000).</li> <li>○ The website is also authenticated under FRE 902(4) because it is an official publication.</li> <li>○ The website is also self-authenticated under FRE 902(7) because it bears SDUSD’s name and contains information showing its origin. <i>See also Lorraine v. Markel American Ins. Co.</i>, 241 F.R.D. 534, 554 (D. Md. 2007).</li> </ul>
2	Reply Br. 16 n. 40	<ul style="list-style-type: none"> <li>○ The Court granted leave for Defendants to object <i>only</i> to the exhibits included with Plaintiffs’ Reply. By objecting to this footnote, Defendants are circumventing this Court’s order and effectively moving the Court to <i>strike</i> this footnote, thereby violating the Court’s express order to “limit their reply to responding to Plaintiffs’ new exhibits. . . .” (ECF No. 54 at 3:37).</li> <li>○ The Anti-Defamation League (ADL) report on CAIR, which is copyrighted, is self-authenticated under FRE 902(13) because it is a certified record generated by an electronic process or system.</li> <li>○ The report is also self-authenticated under FRE 902(7) because it bears ADL’s business name and contains information showing its origin. <i>See Lorraine, supra</i>, 241 F.R.D. at 554.</li> <li>○ The report is also authenticated under FRE 901(b)(4) because it is circumstantial evidence. <i>See, e.g., Siddiqui, supra</i>, 235 F.3d at 1322.</li> <li>○ The report is not hearsay because it is <i>not</i> introduced for the truth of the matter asserted. Defendants argue Plaintiffs introduced the evidence to contend “CAIR has an anti-Israel agenda.” In fact,</li> </ul>

1 2 3 4 5 6 7 8 9 10		<p>Plaintiffs cited to this report to <i>rebut</i> Defendants’ contention (Opp. 15) that permitting CAIR’s presence in SDUSD is in the public interest. Specifically, Plaintiffs counter in their reply (Reply Br. 16) that because CAIR is a divisive force, as evidenced by ADL’s report, enjoining SDUSD’s collaboration with CAIR is in the public interest.</p> <ul style="list-style-type: none"> <li>○ Even if the report is hearsay, it falls under hearsay exceptions FRE 803 (6) (business record) and FRE 807 (residual exception).</li> <li>○ Defendants’ relevance objection is argumentative. Specifically, Defendants argue that the issue in this case is “whether SDUSD implemented an unconstitutionality policy and plaintiffs’ claims are moot.”</li> <li>○ In any event, the Court may consider inadmissible evidence at the preliminary injunction stage when doing so “serves the purpose of preventing irreparable harm before trial.” <i>Flynt Distrib. Co., Inc. v. Harvey</i>, 734 F.2d 1389, 1394 (9th Cir.1984) (citing 11 C. Wright and A. Miller, <i>Fed. Prac. &amp; Proc. Civ</i> § 2949 (1973)).</li> </ul>
11 12 13 14 15 16 17 18 19 20 21 22	3  Exhibit 65	<ul style="list-style-type: none"> <li>○ Nothing in the Court’s order precluded Plaintiffs from introducing evidence in their Reply brief that directly rebuts contentions made in Defendants’ Opposition. Thus, <i>even if</i> this Court denied Plaintiffs’ request for limited discovery, Plaintiffs still could have adduced evidence with their reply brief to rebut Defendants’ opposition arguments directly. Although it is improper to introduce new evidence in a reply, “there is plenty of case law establishing that evidence submitted in direct response raised in an opposition ... is not new.” <i>Fed. Trade Comm’n v. Kutzner</i>, No. CV16-00999BRO (AFMx), 2016 WL 9277319, at *10 (C.D. Cal. Aug. 24, 2016). Here, Plaintiffs introduced this exhibit to rebut (Reply Br. 6) Defendants’ contention (Opp. 4) that the Intercultural Relations Community Council (IRCC) was formed for a wholly neutral purpose rather than, as Plaintiffs argue in their Motion and Reply, as a means to preserve CAIR’s presence in SDUSD.</li> <li>○ In any event, the Court may consider inadmissible evidence at the preliminary injunction stage when doing so “serves the purpose of preventing irreparable harm before trial.” <i>Harvey, supra</i>, 734 F.2d at 1389.</li> </ul>
23 24 25 26 27 28	4  Exhibit 69	<ul style="list-style-type: none"> <li>○ Nothing in this Court’s order precluded Plaintiffs from introducing information from sources other than that from which Defendants produced. It is well settled that the Court has the discretion to either consider or reject facts or arguments raised in a reply. <i>Zamani v. Carnes</i>, 491 F3d 990, 997 (9th Cir. 2007) (a “district court need not consider arguments raised for the first time in a reply brief.”). Accordingly, including this press release did not violate the Court’s order.</li> <li>○ Moreover, attaching the press release as an exhibit was by no means</li> </ul>

		<p>an improper attempt to “sandbag” Defendants, nor an attempt to alter the Court’s conclusion about any issue of fact or law. The purpose of the press release was to bring to the Court’s attention that anti-Semitism occurs in San Diego, which is analogous to Defendants’ assertion (Opp. 15 n. 7) that “Islamophobia is indeed alive and well in San Diego.”</p> <ul style="list-style-type: none"> <li>○ Even if the press release was “evidence,” the Court may consider inadmissible evidence at the preliminary injunction stage when doing so “serves the purpose of preventing irreparable harm before trial.” Harvey, supra, 734 F.2d at 1394.</li> </ul>
5	Exhibit 71	<ul style="list-style-type: none"> <li>○ Nothing in this Court’s orders precluded Plaintiffs from introducing information from sources other than that from which Defendants produced through limited discovery.</li> <li>○ Also, this evidence was “submitted in direct response” and as a rebuttal to Defendants’ contention (Opp. 14) that Plaintiffs delayed in filing their Motion. <i>Edwards v. Toys ‘R’ US</i>, 527 F.Supp.2d 1197, 1205 n. 31 (C.D. Cal. 2007).</li> </ul>
6	Index of Exhibits	<ul style="list-style-type: none"> <li>○ Defendants contend (Defs.’ Evid. Obj. 6) that the Index “goes well beyond an index that identifies exhibits attached to plaintiffs’ reply brief.” But Defendants do not cite any source or authority that supports their idea of how an index should be formatted. That Defendants disagree with Plaintiffs’ preferences for formatting—which adhere to the local rules—is not a proper evidentiary objection.</li> <li>○ Defendants contend that the Index includes argument, but they do not give a single example of any alleged argumentation, nor do they cite any source or authority holding that “selective quotations” constitute improper argument.</li> <li>○ Plaintiffs need not address Defendants’ contentions (Defs.’ Evid. Obj. 7) about the relevancy of the Index because it is not “evidence.”</li> </ul>

For the reasons set forth above, Plaintiffs respectfully request that the Court overrule Defendants’ evidentiary objections.

Respectfully submitted,

FREEDOM OF CONSCIENCE DEFENSE FUND

Dated: June 18, 2018

By: /s/ Charles S. LiMandri  
Charles S. LiMandri

Attorney for PLAINTIFF

**CERTIFICATE OF SERVICE**

*Citizens for Quality Educ. San Diego, et al. v. San Diego Unified School District, et al.*  
Case No.: 3:17-cv-1054-BAS-JMA

I, the undersigned, declare under penalty of perjury that I am over the age of eighteen years and not a party to this action; my business address is P.O. Box 9520, Rancho Santa Fe, California 92067, and that I served the following document(s):

- **PLAINTIFFS' RESPONSES TO DEFENDANTS' EVIDENTIARY OBJECTIONS .**

on the interested parties in this action by placing a true copy in a sealed envelope, addressed as follows:

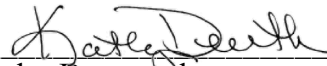
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**Pro Hac Vice**

  X   **(BY MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Rancho Santa Fe, California in the ordinary course of business. The envelope was sealed and placed for collection and mailing on this date following our ordinary practices. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

  X   **(BY ELECTRONIC FILING/SERVICE)** I caused such document(s) to be Electronically Filed and/or Service using the ECF/CM System for filing and transmittal of the above documents to the above-referenced ECF/CM registrants.

I declare under penalty of perjury, under the laws of the State of California, that the above is true and correct. Executed on June 18, 2018, at Rancho Santa Fe, California.

  
 \_\_\_\_\_  
 Kathy Denworth