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7 LOS ALTOS SCHOOL DISTRICT; BOARD OF
TRUSTEES OF THE LOS ALTOS SCHOOL
8 DISTRICT; and TIM JUSTUS

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SANTA CLARA**

12 BULLIS CHARTER SCHOOL,
13
14 Petitioner,

CASE NO. 109 CV 144569

15 v.

**RESPONDENTS AND DEFENDANTS LOS
ALTOS SCHOOL DISTRICT, BOARD OF
TRUSTEES OF LOS ALTOS SCHOOL
DISTRICT, AND TIM JUSTUS'
OBJECTIONS TO EVIDENCE SUBMITTED
WITH PETITIONER'S REPLY BRIEF**

16 LOS ALTOS SCHOOL DISTRICT;
17 BOARD OF TRUSTEES OF THE LOS
ALTOS SCHOOL DISTRICT; and TIM
JUSTUS, in his capacity as District
Superintendent

Hearing: October 15, 2009
Time: 9:00 a.m.
Dept: 1
Judge: Hon. James P. Kleinberg

18 Respondents.

Petition Filed: June 10, 2009

19
20 Respondents, Los Altos School District, Board of Trustees of the Los Altos School
21 District and Tim Justus, hereby object to the declarations of Leon Beauchman, John Phelps,
22 Wanny Hersey, Brian Haux, Ken Smith, Rithy Chan, Andrea Eyring, David Spector, Francis
23 LaPoll, Arturo J. Gonzalez, Peter Evans and David Carter in Support of Petitioner's Amended
24 Petition for Writ of Mandate and Complaint for Declaratory Relief.

25 **1. Respondent's Objections to the Declaration of Arturo J. Gonzalez:**

26 **Paragraphs 2-32:** Objection, legal argument, lack of personal knowledge, and hearsay
27 (*In re Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, Fn. 3 [finding arguments in declaration
28 a "sloppy practice" and that the "proper place for argument is in points and authorities, not

1 declarations”]; Evid. Code, §§ 402-403, 702). Counsel improperly uses his declaration to add
2 legal argument, which again is end-run around the page limit requirement.

3 **Paragraphs 3, 4, 12, 16, 22, 23, 24, 25, and 26:** Objection, failure to authenticate writing
4 (Evid. Code, §§ 1400-1401).

5 **2. Respondent’s Objections to the Declaration of John Phelps:**

6 **Paragraphs 2:** Objection, hearsay and failure to authenticate writing (Evid. Code, §§
7 1200, 1400 and 1401). The second sentence in Paragraph 2 quotes an unknown source.

8 **Paragraph 3:** Objection, hearsay and failure to authenticate writing (Evid. Code, §§
9 1200, 1400 and 1401). The first sentence in Paragraph 3 quotes an unknown source.

10 **3. Respondent’s Objections to the Declaration of Wanny Hersey:**

11 **Paragraphs 2, 4, 7, 8:** Objection, relevance as to enrollment numbers for previous school
12 years. (Evid. Code, § 350).

13 **Paragraph 6:** Objection, vague as time. In is unclear what year the wait list and lottery
14 took place.

15 **Exhibit 1:** Objection, failure to authenticate writing (Evid. Code, §§1400-1401). The
16 declarant states that Superintendent Justus sent her the Exhibit, although the declarant’s name
17 does not appear on the Exhibit.

18 **4. Respondent’s Objections to the Declaration of Brian Haux:**

19 **Paragraphs 3-8:** Objection, relevance, lack of foundation, calls for speculation, and
20 failure to authenticate writing (Evid. Code, §§ 350, 402-403, 702, 1400-1401). It is impossible to
21 tell from this declaration the accuracy of photos and the information they are trying to depict.

22 **5. Respondent’s Objections to the Declaration of Ken Smith:**

23 **Paragraph 1-14:** Objection, improper expert opinion (Evid. Code, § 800).

24 **Paragraph 3-14:** Objection, lack of foundation and calls for speculation (Evid. Code, §
25 802 and 803). It is unclear as to the basis for the measurements contained in paragraphs 3-14, and
26 whether Mr. Smith is qualified to make these calculations and form opinions.

27 **Exhibits 1-6:** Objection, lack of foundation and failure to authenticate writing (Evid.
28 Code, §§ 1400 and 1401). It is impossible to tell from this declaration the accuracy of photos and

1 the information they are trying to depict.

2 **6. Respondent's Objections to the Declaration of Rithy Chan:**

3 **Paragraph 1-5:** Objection, improper expert opinion (Evid. Code, §800).

4 **Paragraphs 3-5:** Objection, lack of foundation, calls for speculation, failure to
5 authenticate writing, and lack of personal knowledge (Evid. Code, §§ 402-403, 702, 1400 and
6 1401). These paragraphs do not contain sufficient information to demonstrate accuracy.

7 **7. Respondent's Objections to the Declaration of Andrea Eyring:**

8 **Paragraph 3:** Objection, hearsay (Evid. Code, § 1200) as to what Randy Kenyon stated at
9 his deposition.

10 **Paragraph 5:** Objection, legal opinion and argument (Evid. Code, §§ 402-403, 702; *In re*
11 *Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, Fn. 3 [finding arguments in declaration a
12 "sloppy practice" and that the "proper place for argument is in points and authorities, not
13 declarations"]).

14 **Paragraphs 9-11, 13:** Objection, hearsay (Evid. Code, § 1200) as to what Randy
15 Kenyon stated at his deposition.

16 **Paragraph 7:** Objection, lack of foundation as to the photographs prepared.

17 **Paragraph 9:** Objection, lack of foundation as to the photographs prepared.

18 **Exhibits 6-10:** Objection, lack of foundation as to the photographs prepared.

19 **Exhibit 11:** Objection, lack of foundation, lack of personal knowledge, and failure to
20 authenticate writing (Evid. Code, §§ 402-403, 702, 1400-1401).

21 **Paragraph 10:** Objection, lack of foundation, calls for speculation.

22 **Paragraph 11:** Objection, lack of foundation, calls for speculation, lack of personal
23 knowledge, and failure to authenticate writing (Evid. Code, §§ 402-403, 702, 1400-1401).

24 **Paragraph 12:** Objection, calls for speculation, lack of foundation, lack of personal
25 knowledge, legal opinion and argument (Evid. Code, §§ 402-403, 702; *In re Marriage of Heggie*
26 (2002) 99 Cal.App.4th 28, 30, Fn. 3 [finding arguments in declaration a "sloppy practice" and
27 that the "proper place for argument is in points and authorities, not declarations"]).

28

1 **8. Respondent’s Objections to the Declaration of David Spector:**

2 **Paragraphs 2-50:** Objection, relevance and legal argument (Evid. Code, § 350; (*In re*
3 *Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, Fn. 3 [finding arguments in declaration a
4 “sloppy practice” and that the “proper place for argument is in points and authorities, not
5 declarations”])).

6 **Paragraph 4:** Objection, hearsay. (Evid. Code, § 1200) as to what Randy Kenyon stated
7 at his deposition..

8 **Paragraph 5:** Objection, hearsay (Evid. Code, § 1200) as to what Randy Kenyon stated
9 during their meetings.

10 **Exhibits 1-5:** Objection, relevance and failure to authenticate writing. (Evid. Code, §§
11 350, 1400, 1401).

12 **Exhibit 8:** Objection, lack of foundation.

13 **9. Respondent’s Objections to the Declaration of Francis LaPoll:**

14 **Paragraphs 3-12:** Objection, relevance and outside the scope of the proceedings (Evid.
15 Code, § 350.) The history of the Charter School is irrelevant.

16 **10. Respondent’s Objections to the Declaration of Peter Evans:**

17 Paragraphs 5: Objection, lack foundation as to how projected the number of students.

18 **11. Respondent’s Objections to the Declaration of David Carter:**

19 **Paragraph 3:** Objection, hearsay, lack of foundation, and failure to authenticate writing
20 (Evid. Code §§ 1200, 1400, and 1401).

21 **Paragraphs 2-9:** Objection, relevance and lack of personal knowledge
22 (Evid. Code §§ 350, 402-403, 702.)

23 **Paragraph 9:** Objection, hearsay and legal argument (Evid. Code § 1200; (*In re*
24 *Marriage of Heggie* (2002) 99 Cal.App.4th 28, 30, Fn. 3 [finding arguments in declaration a
25 “sloppy practice” and that the “proper place for argument is in points and authorities, not
26 declarations”]).)

27 **12. Respondent’s Objections to the Declaration of Leon Beauchman**

28 **Paragraphs 6 and 7:** Objection, hearsay (Evid. Code, § 1200) as to what was said during


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the meeting.

Based upon the foregoing, respondents respectfully requests that the court sustain respondents' objections and decline to consider the above described evidence and strike it from Petitioner's supporting papers.

DATED: October 9, 2009

MILLER BROWN & DANNIS
SUE ANN SALMON EVANS
JOHN R. YEH
DONALD A. VELEZ
DEBORAH UNGAR
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By: 
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is: 71 Stevenson Street, 19th Floor, San Francisco, CA 94105.

On the date set forth below I served the foregoing document described as **RESPONDENTS AND DEFENDANTS LOS ALTOS SCHOOL DISTRICT, BOARD OF TRUSTEES OF LOS ALTOS SCHOOL DISTRICT, AND TIM JUSTUS' OBJECTIONS TO EVIDENCE SUBMITTED WITH PETITIONER'S REPLY BRIEF** on interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

(VIA U.S. MAIL) I caused such document to be placed in the U.S. Mail at San Francisco, California with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of 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.

(BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the addressee.

(VIA OVERNIGHT MAIL) I caused such envelope to be deposited at an authorized "drop off" box on that same day with delivery fees fully provided for at 71 Stevenson Street, 19th Floor, San Francisco, CA 94105, in the ordinary course of business.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.

Executed on October 9, 2009, at San Francisco, California.

Michele Knox-Thomas
Type or Print Name


Signature

MILLER BROWN & DANNIS
71 STEVENSON STREET, 19TH FLOOR
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