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*Attorneys for Plaintiffs*

14 UNITED STATES DISTRICT COURT  
 15 SOUTHERN DISTRICT OF CALIFORNIA

17 JOHN DOE, an individual, et al.,  
 18 Plaintiffs,  
 19 v.  
 20 SAN DIEGO UNIFIED SCHOOL  
 21 DISTRICT, et al.,  
 22 Defendants.

Case No.: 3:21-cv-01809-LL-MDD  
**Plaintiffs’ Response to Objections  
 to the Declaration of Jeffrey M.  
 Trissell, Esq., and Request to File  
 Exhibits Non-Electronically, in  
 Support of Plaintiffs’ Motion for a  
 Preliminary Injunction**

Judge: Hon. Linda Lopez  
 Courtroom: 2B  
 Hearing Date: June 15, 2022

PER CHAMBERS RULES, NO  
 ORAL ARGUMENT UNLESS  
 SEPARATELY ORDERED BY THE  
 COURT

1                   **PLAINTIFFS’ RESPONSE TO OBJECTIONS TO THE**  
2                   **DECLARATION OF JEFFREY M. TRISSELL, ESQ.**

3           Plaintiffs Tiffany, Terry, and Taylor Roe, and Andrew and Adrian Poe, hereby  
4 submit the following response to the evidentiary objections submitted by Defendants  
5 San Diego Unified School District, Board President Sharon Whitehurst-Payne, Board  
6 Vice President Sabrina Bazzo, Board Member Richard Barrera, Board Member  
7 Michael McQuary, Board Member Kevin Beiser, and Superintendent Lamont  
8 Jackson, regarding the Declaration of Jeffrey M. Trissell, Esq., in opposition to  
9 Plaintiffs’ motion for a preliminary injunction.

10           **1. General Objection to Highlighting in Exhibits.**

11           Defendants first offer the novel objection that all of the exhibits to the  
12 declaration of Jeffrey M. Trissell, Esq. are objectionable because Plaintiffs included  
13 highlighting to direct the Court to the relevant portions. (Dkt. 40 at 1:24-2:7.)  
14 Defendants’ theory is that summaries are only admissible to the extent they are  
15 accurate, and that the highlighting represents a misleading and inaccurate summary  
16 of the document as a whole. (*Id.*) This argument is then reiterated in separate  
17 objections to each of the five exhibits. (*See* Dkt. 40 at 3:8-4:25, Obj. Nos. 1-5.)

18           Of course, Plaintiffs had an affirmative duty to direct the Court to the relevant  
19 portions of all exhibits. Many treatises state that this is properly done via  
20 highlighting. *See, e.g.*, VIRGINIA A. PHILLIPS & KAREN L. STEVENSON, RUTTER GRP.  
21 PRAC. GUIDE: FED. CIV. PROC. BEFORE TRIAL ¶ 14:94 (Apr. 2022 update) (“You  
22 should include ... the page and line number of the transcript, and attach a copy of the  
23 appropriate transcript passage, preferably having highlighted the relevant portion”);  
24 DAVID N. FINLEY & STEPHANIE HOIT LEE, RUTTER GRP. PRAC. GUIDE: FED.  
25 SUMMARY JUDGMENT & RELATED TERMINATION MOTIONS ¶ 1:30 (Feb. 2022  
26 update) (“Make it easy for the court to find and verify those facts by including  
27 specific references to the evidence, such as selected passages of a deposition, and  
28 when appropriate, highlight those references so that they stand out”); *id.* at ¶ 1:60

1 (“If you have short cites within a document, such as a deposition transcript or  
 2 interrogatory, highlight your references.”); *see also* JUDITH K. FITZGERALD, ET AL.,  
 3 RUTTER GRP. PRAC. GUIDE: BANKRUPTCY ¶ 19:289 (May 2022 update) (“Where a  
 4 new case is decided just before the hearing, bring copies of the decision for the judge  
 5 and opposing counsel, with important passages highlighted on *all* copies.”).

6 Plaintiffs believe the Court is fully capable of reviewing both the highlighted  
 7 and non-highlighted portions of the exhibits, without any threat of being misled or  
 8 misinformed. If, however, the Court would like non-highlighted exhibits, Plaintiffs  
 9 can submit them.

## 10 **2. Objection No. 3 to Board of Education Meeting Transcript**

11 Defendants’ only other objection is one based on the Best Evidence rule.  
 12 Specifically, Defendants object to Exhibit 44, a transcript of the May 24, 2022 Board  
 13 of Education meeting, contending that the Best Evidence of the content of that  
 14 meeting is the video recording that was created and posted by YouTube following  
 15 Defendants’ internet livestream of their meeting. *See* Fed. R. Evid. 1002-1004. That  
 16 recording is available here: <https://www.youtube.com/watch?v=GZUsHy18cKQ>.

17 The Best Evidence rule would only apply here if Plaintiffs were seeking to  
 18 prove the contents of the recording itself. If the contents of the recording were at  
 19 issue, then the recording itself is the Best Evidence. But if the contents of the meeting  
 20 are at issue, then any medium which accurately conveys those contents are equally  
 21 the Best Evidence. There is no “order of preferred admissibility.” *United States v.*  
 22 *Gonzales-Benitez*, 537 F.2d 1051, 1053–54 (9th Cir. 1976) (noting that “the trial court  
 23 was correct in dismissing the objection out of hand.”).

24 Further, the Best Evidence rule only applies where control of the original is in  
 25 the custody of the offeror of secondary evidence. Thus, because Defendants have  
 26 control of the original recording, and failed to produce it themselves, they have  
 27 waived any objection. *See* Fed. R. Evid. 1004(c); *see also id.* at Adv. Committee Note  
 28 to 1972 Proposed Rules, Note to Paragraph (3). And this Court has discretion to not

1 require an original where “no good purpose is served by production of the original.”  
2 Fed. R. Evid. 1004(d); Adv. Committee Note to 1972 Proposed Rules, Note to  
3 Paragraph (4).

4 Nevertheless, to avoid any issue, Plaintiffs are willing to submit a downloaded  
5 MP4 file of the YouTube recording on a flash drive. With that flash drive, Plaintiffs  
6 would also submit the recordings of the meetings for which transcripts are attached  
7 to the First Amended Complaint as Exhibits 9, 29.1, and 29.2. According to the  
8 Court’s rules, “Exhibits must be submitted electronically in CM/ECF as  
9 attachments,” but “[a] party may seek leave of the court to allow the non-electronic  
10 filing of exhibits when they are not convertible to electronic form (e.g. videotapes,  
11 maps, etc.).” See Electronic Case Filing Admin. Pol’y & Proc. Manual § 2(k) (Apr.  
12 12, 2022); see also CivLR 5.4(a) (incorporating manual as part of the Local Rules).  
13 Obtaining leave of court first is mandatory; without leave, the manually submitted  
14 exhibit will be rejected. See *Low v. Trump Univ., LLC*, 2016 WL 4098195, at \*2 (S.D.  
15 Cal. Aug. 2, 2016).

16 Plaintiffs do not believe that the video recordings are needed, but if the Court  
17 disagrees, Plaintiffs request leave to submit them.

18  
19 Respectfully submitted,

20 LiMANDRI & JONNA LLP

21  
22 Dated: June 14, 2022

By:



Charles S. LiMandri

Paul M. Jonna

Mark D. Myers

Jeffrey M. Trissell

Robert E. Weisenburger

Milan L. Brandon II

Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

***John Doe, et al. v. San Diego Unified School District, et al.***

USDC Court Case No.: 3:21-cv-1809-CAB-LL

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 9120, Rancho Santa Fe, California 92067, and that I served the following document(s):

- **Plaintiffs' Response to Objections to the Declaration of Jeffrey M. Trissell, Esq., and Request to File Exhibits Non-Electronically, in Support of Plaintiffs' Motion for a Preliminary Injunction.**

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

Mark R. Bresee, Esq.  
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**Attorneys for Defendants**


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.

       **(BY ELECTRONIC MAIL)** I served a true copy, electronically on designated recipients via electronic transmission of said documents.

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 14, 2022, at Rancho Santa Fe, California.

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