

1 **STEPTOE & JOHNSON LLP**  
 2 201 East Washington Street, Suite 1600  
 3 Phoenix, Arizona 85004-2382  
 4 Telephone: (602) 257-5200  
 5 Facsimile: (602) 257-5299  
 6 P. Bruce Converse (State Bar No. 005868)  
[bconverse@steptoe.com](mailto:bconverse@steptoe.com)  
 Paul K. Charlton (State Bar No. 012449)  
[pcharlton@steptoe.com](mailto:pcharlton@steptoe.com)  
 Timothy W. Overton (025669)  
[toverton@steptoe.com](mailto:toverton@steptoe.com)

7 **TUCSON UNIFIED SCHOOL DISTRICT**  
 8 **LEGAL DEPARTMENT**  
 9 1010 E. Tenth Street  
 Tucson, Arizona 85719  
 Telephone: (520) 225-6040  
 Robert Ross (State Bar No. 023430)  
[Robert.Ross@tsud1.org](mailto:Robert.Ross@tsud1.org)  
 Samuel E. Brown (State Bar No. 027474)  
[Samuel.Brown@tusd1.org](mailto:Samuel.Brown@tusd1.org)

10 *Attorneys for Tucson Unified*  
 11 *School District No. 1*

12  
 13  
 14 UNITED STATES DISTRICT COURT  
 15 DISTRICT OF ARIZONA

16 Roy and Josie Fisher, et al., Plaintiffs,	4:74-cv-00090-DCB (Lead Case)
17 v.	
18 Tucson Unified School District No. 1, et al.,	
19 Defendants.	

20 Maria Mendoza, et al., Plaintiffs,	CV 74-204 TUC DCB (Consolidated Case)
21 v.	
22 Tucson Unified School District No. 1, et al.	
23 Defendants.	

24  
 25 **RESPONSE IN OPPOSITION TO**  
 26 **FISHER PLAINTIFFS' MOTION TO STRIKE**  
 27 **PORTIONS OF THE SPECIAL MASTER'S RESPONSE TO**  
 28 **OBJECTIONS TO 2016-17 ANNUAL REPORT [ECF 2114]**

### **Introduction and Summary**

1  
2 The Court should deny the Fisher Plaintiffs' request for drastic relief striking a  
3 portion of the Special Master's reply to objections to his Annual Report. The request  
4 meets none of the requirements of a motion to strike under Local Rule 7.2(m) and  
5 Federal Rule of Civil Procedure 12(f). Indeed, the Fisher Plaintiffs apparently simply  
6 followed the Mendoza Plaintiffs in styling their filing as a "motion to strike," rather than  
7 what it really is – an impermissible, unsolicited sur-reply to the Special Master's reply  
8 to objections. Other than the fact that they disagree with certain aspects of the Special  
9 Master's reply, the Fisher Plaintiffs offer no basis for striking something from the  
10 record.

11 But even assuming the Fisher Plaintiffs had requested leave to file a sur-reply,  
12 none is necessary. The Special Master's subsequent filing (after the Fisher's motion to  
13 strike was filed) takes a different approach on eligibility for GATE services (ECF 2115  
14 at 9). Regarding their other disagreement (also raised by the Mendoza Plaintiffs), both  
15 the Fisher and Mendoza Plaintiffs assert that the Special Master attempts to "adopt" a  
16 new school integration metric. However, the Special Master simply explains that  
17 integration results can look dramatically different based on the arbitrary percentage-  
18 based definition by which they are measured. This concept, which has been long  
19 recognized by the U.S. Supreme Court, underlies the USP's integration obligations,  
20 which do not require the District to meet any particular statistical integration goals, but  
21 instead simply obligate the District to pursue integration in good faith.

22 Accordingly, whether styled as a motion to strike, motion for leave to file a  
23 response, or otherwise, the Court should deny the Fisher Plaintiffs' motion.

### **Detailed Analysis**

#### **I. The Fisher Plaintiffs' Motion to Strike Must Be Denied.**

25 A motion to strike material from the record "should not be granted unless it is  
26 clear that the matter to be stricken could have no possible bearing on the subject matter  
27 of the litigation." *Colaprico v. Sun Microsystems, Inc.*, 759 F.Supp. 1335, 1339 (N.D.  
28

1 Cal. 1991). Moreover, “even a properly made motion to strike is a drastic remedy which  
2 is disfavored by the courts and infrequently granted.” *Yount v. Regent Univ., Inc.*, No.  
3 CV-08-8011-PCT-DGC, 2009 WL 995596, at \*11 (D. Ariz. Apr. 14, 2009) (quoting  
4 *Int’l Longshoreman’s Assoc. v. Va. Int’l Terminals, Inc.*, 904 F.Supp. 500, 504  
5 (E.D.Va.1995)); *see also* *Lowe v. Maxwell & Morgan PC*, 322 F.R.D. 393, 398 (D.  
6 Ariz. 2017) (“Motions to strike are generally disfavored and rarely granted.”).

7 Under Rule 12(f), the Fisher Plaintiffs must, but cannot even arguably, show that  
8 the Special Master’s pleading “is redundant, immaterial, impertinent, or scandalous or  
9 that the requested relief is unavailable[.]” *Vesecky v. Matthews (Mill Towne Ctr.) Real*  
10 *Estate, LLC*, No. CV-09-1741-PHX-JAT, 2010 WL 749636, at \*1 (D. Ariz. Mar. 2,  
11 2010); *see also* Fed. R. Civ. P. 12(f). “Any doubt regarding the redundancy,  
12 immateriality, impertinence, scandalousness or insufficiency of a pleading must be  
13 decided in favor of the non-movant.” *Vesecky*, 2010 WL 749636, at \*1.<sup>1</sup> Further,  
14 Mendoza Plaintiffs must show “how such material will cause prejudice.” *Id.*

15 The material to which Fisher Plaintiffs object meets none of the Rule 12(f)  
16 criteria – the only issue raised by Fisher Plaintiffs is that they disagree with the Special  
17 Master on the issues they raise. The discussion plainly is not redundant and is not  
18 “immaterial” because it relates to the District’s efforts to complete any requirements for  
19 termination of court supervision. *See Vesecky v. Matthews (Mill Towne Ctr.) Real*  
20 *Estate, LLC*, No. CV-09-1741-PHX-JAT, 2010 WL 749636, at \*1 (D. Ariz. Mar. 2,  
21 2010) (quoting *Fantasy, Inc. v. Fogerty*, 984 F.2d 1524, 1527 (9th Cir.1993), *rev’d on*  
22 *other grounds*, 510 U.S. 517 (1994)). The discussion is not “impertinent” because it  
23 pertains to the issues in question, *i.e.*, the District’s compliance with the USP. *See id.*  
24 And the discussion is not “scandalous” because it does not “unnecessarily reflect[] on  
25 the moral character of an individual or states anything in repulsive language that detracts  
26

---

27 <sup>1</sup> Although L.R. Civ. 7.2(m) also permits motions to strike under Rule 26(g)(2), under  
28 Rule 37(b)(2)(A)(iii), or in response to filings that are prohibited by a statute, rule, or  
order, Fisher Plaintiffs’ motion plainly does not seek to strike for any of those reasons.

1 from the dignity of the court.” *Id.* The Fisher Plaintiffs do not even argue that the  
2 pleading caused them prejudice (other than their substantive disagreement).

3 At bottom, just like the Mendoza Plaintiffs’ motion to strike, this motion by the  
4 Fisher Plaintiffs is nothing more than a thinly veiled attempt to skirt the Court’s order  
5 prohibiting sur-replies unless directed by the Court (ECF 2103 at 2). The Court should  
6 deny the Fisher Plaintiffs’ improper motion.

7  
8 **II. The Special Master’s Filing Does Not Require a Response.**

9 Even assuming the Fisher Plaintiffs had requested leave to file a sur-reply, none  
10 is needed, for the reasons set out in the District’s response to the Mendoza Plaintiffs  
11 motion to strike, which in the interests of brevity is merely incorporated herein by  
12 reference (ECF 2113).

13 **Conclusion**

14 For the reasons set forth above, the Court should deny the Fisher Plaintiffs’  
15 Motion to Strike Portions of the Special Master’s Response to Objections to 2016-17  
16 Annual Report [ECF 2011.]

17 DATED this 5<sup>th</sup> day of July, 2018.

18 **STEPTOE & JOHNSON LLP**

19 By /s/ P. Bruce Converse  
20 P. Bruce Converse  
21 Paul K. Charlton  
22 Timothy W. Overton

23 **TUCSON UNIFIED SCHOOL DISTRICT**  
24 **LEGAL DEPARTMENT**

25 Robert Ross  
26 Samuel E. Brown  
27 Attorneys for Tucson Unified School District  
28 No. 1

**CERTIFICATE OF SERVICE**

1  
2 The foregoing document was lodged with the Court electronically through the  
3 CM/ECF system this 5<sup>th</sup> day of July, 2018, causing all parties or counsel to be served by  
4 electronic means, as more fully reflected in the Notice of Electronic Filing.  
5

6  
7 /s/ Diane Linn  
8 Employee of Steptoe & Johnson LLP  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28