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 13 **UNITED STATES DISTRICT COURT**
 14 **DISTRICT OF ARIZONA**

15 Roy and Josie Fisher, et al.,
 16 Plaintiffs,
 17 v.
 18 United States of America,
 19 Plaintiff-Intervenors,
 20 v.
 21 Anita Lohr, et al.,
 22 Defendants,
 23 Sidney L. Sutton, et al.,
 24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
 TO TUSD NOTICE AND REPORT OF
 COMPLIANCE WITH
 EXTRACURRICULAR ACTIVITIES
 COMPLIANCE PLAN (DOC. 2260) AND
 OBJECTION TO THE DISTRICT'S
 REQUEST THAT IT BE AWARDED
 PARTIAL UNITARY STATUS WITH
 RESPECT TO SECTION VIII OF THE
 USP**

25 Hon. David C. Bury
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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et
al.,

7 Defendants.

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10 Pursuant to this Court's Orders of September 6, 2018 ("9/6/18 Order") (Doc. 2123),
11 July 26, 2019 (Doc. 2243), and September 6, 2019 (Doc. 2271), Mendoza Plaintiffs submit
12 this Response to TUSD's Notice and Report of Compliance with Extracurricular Activities
13 Completion Plan ("Extracurricular Activities CP") (Doc. 2260).

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15 **Argument**

16 ***The District has Failed to Implement One Aspect of the Completion Plan and***
17 ***Appears to Have Misunderstood Another Directive in That Plan in a Way That***
18 ***Leaves its Compliance as yet Incomplete***

19 In furtherance of the USP requirement that the "District shall ensure that
20 extracurricular activities provide opportunities for interracial contact in positive settings of
21 shared interest" (USP Section VIII, A, 2), the Completion Plan mandated by the Court
22 states that "[t]he District shall analyze the array of extracurricular activities occurring in
23 the schools and identify those that provide opportunities for interracial contact and positive
24 settings of shared interest, and, if necessary, develop remedial strategies to ensure such
25 opportunities are occurring in each school." (9/6/18 Order at 137:28-138:2.) The District
26 has set forth the process that principals will follow to monitor the extent to which the
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1 extracurricular activities in their schools are providing opportunities for positive interracial
2 contact and how they will be held accountable (“Extracurricular Activities CP, Doc. 2260-
3 1, at 4 and 22-23) but it has not filed anything to establish that it has implemented the
4 portion of the Completion Plan that requires it to “analyze the array of extracurricular
5 activities occurring in the schools and identify those that provide opportunities for
6 interracial contact and positive settings of shared interest and, if necessary, develop
7 remedial strategies to ensure such opportunities are occurring in each school.” (Doc. 2123
8 at 137:28-138:2.)

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10 The Completion Plan states that the “District shall revise its reporting on
11 extracurricular activities to include all such activities clearly delineating which are funded
12 by parents, the community, the District, or other sources outside the District including the
13 21 Century or similar grants.” (*Id.* at 137:19-21.) Mendoza Plaintiffs had understood this
14 directive to be addressing the concern referenced in the Special Master’s 2016-17 Annual
15 Report that inequities might exist between schools as a consequence of parent and other
16 outside funding of extracurricular activities and that more information therefore was
17 necessary to understand whether this was so and whether it presented an issue that needed
18 to be addressed. (*See* 2016-17 SMAR, Doc. 2096 at 70:16-72:20.) What the District has
19 provided is a list of the funding sources for all extracurricular activities (Doc. 2260-1 at
20 15-16) but no means to link the extracurricular activities resulting from that funding to any
21 particular school or schools. Therefore it does not enable the assessment that Mendoza
22 Plaintiffs had understood was the purpose behind the directive. Mendoza Plaintiffs
23 therefore believe that more work is required of the District before it can be found to have
24 complied with this provision of the Completion Plan.

1 ***The Court Should Not Rely on Data Predating the 2016-17 School Year***
2 ***and Should Request the Special Master to Confirm the Reliability of Data***
3 ***for Subsequent Years Before Concluding That the Findings the District is***
4 ***Seeking can be Made in Reliance on That Data***

5 The District has included data going back to 2012-13 in its charts showing
6 participation over time in extracurricular activities and back to 2014-15 in its chart
7 showing unduplicated student counts of extracurricular participation. (Doc. 2260-1,
8 Exhibit 2, at 7-10.) However, as the Special Master noted in his Annual Report,
9 “Determining whether the District has met its responsibilities with respect to
10 extracurricular activities is complicated by the fact that the data available are inadequate:
11 (1) Data from past years are not based on similar ways of describing activities; (2) Data on
12 participation in 21st Century Project funded activities are not reported; (3) Procedures for
13 collecting data have changed; (4) Not all schools have reported data.” (2016-17 SMAR,
14 Doc. 2096 at 4-10.) (Mendoza Plaintiffs also discussed the problems with the District’s
15 data and reporting of extracurricular activities in their Opposition to TUSD’s Motion for
16 Partial Unitary Status, particularly in Doc. 2016 at pages 39, n. 34 and 42.)
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19 As the Mendoza Plaintiffs wrote in their opposition to the District’s motion for
20 partial unitary status, the District cannot be found to have attained unitary status in the area
21 of extracurricular activities until it has been able to provide complete and consistent
22 information for a sufficient number of years to the permit the Plaintiffs, the Special Master,
23 and the Court to assess whether it has fully and satisfactorily complied with its obligations
24 under the USP. Because there has been such inconsistency in the District’s reporting in
25 this area, Mendoza Plaintiffs also respectfully request that the Special Master be instructed
26 to review the District’s reporting on participation in extracurricular activities to determine
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1 both the appropriate years to use for data comparison purposes and the reliability (and
2 consistency) of the data.

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4 **Conclusion**

5 For the reasons set forth above Mendoza Plaintiffs respectfully request the Court to
6 hold that the District has failed to comply with its 9/6/18 Order relating to extracurricular
7 activities, instruct the Special Master to make further inquiries relating to the reliability
8 and consistency of the District's data reporting in this area, and deny the District's request
9 that it be granted partial unitary status with respect to Sections VIII of the USP.¹ In an
10 excess of caution, Mendoza Plaintiffs respectfully invite the Court's attention to their
11 earlier objections to such requests by the District and to their Motion to Stay (Doc. 2186),
12 expressly incorporate herein the arguments set forth in those pleadings, and also note this
13 Court's statement when it denied that Motion that it will not again reach the question of
14 unitary status until after the District's Executive Summary filing and the proceedings
15 relating thereto.
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27 ¹ In expressly addressing the District's submission with respect Section VIII of the USP,
28 Mendoza Plaintiffs do not intend to waive, and hereby retain, their claim that the District
has not yet attained unitary status with respect to any portion of the USP.

Dated: September 20, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on September 20, 2019, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD NOTICE AND REPORT OF COMPLIANCE WITH EXTRACURRICULAR ACTIVITIES COMPLIANCE PLAN AND OBJECTION TO THE DISTRICT'S REQUEST THAT IT BE AWARDED PARTIAL UNITARY STATUS WITH RESPECT TO SECTION VIII OF THE USP (DOC. 2260)** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: September 20, 2019