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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Roy and Josie Fisher, et al.,
Plaintiffs,

and

Maria Mendoza, et al.,
Plaintiffs,

v.

Tucson Unified School District No. One, et al.,
Defendants.

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

**MOTION TO IMPOSE SANCTIONS FOR
BAD FAITH & UNETHICAL
MISCONDUCT BY DEFENDANT
TUCSON UNIFIED SCHOOL DISTRICT
#1 FOR IMPROPER FISHER CLASS
MEMBER CONTACT AND
INTEFERENCE**

(Assigned to Hon. David C. Bury)

(Oral Argument Requested)

COMES NOW Plaintiffs *Fisher* Representatives, by and through counsel undersigned, respectfully requesting that the District Court properly sanction Defendant Tucson Unified School District #1 (hereafter the “District”) pursuant to the holding in *Moser v. Bret Harte Union High School District*, 366 F.Supp. 2d. 944 (2005) [District Court has inherent power to sanction bad faith misconduct] for alleged egregious dishonesty/bad faith and unethical misconduct through the District’s improper and surreptitious contact and subsequent interference with *Fisher* class members in a blatant attempt to both entice, through readily apparent conspiratorial subterfuge, and purposely undermine the integrity of the present class action by inviting said class members

1 to a clandestine meeting at the Viscount Hotel for an extravagant dinner with TUSD#1
 2 Superintendent Trujillo held on January 31, 2020. The “dinner” was for the unconscionable
 3 purpose of improperly soliciting support for the District’s claim that it had already done enough
 4 to warrant “Unitary Status” in the present case. Such misconduct was readily apparent through
 5 the District’s purposeful presentation of misleading and biased information to said Class Members
 6 at the dinner in order to obfuscate the District’s questionable progress under the consent decree
 7 itself. Moreover, the District’s surreptitious presentation of misleading or biased information was
 8 actually in direct contravention of or adverse to the District Court’s own factual findings in this
 9 case from earlier this year related to whether TUSD#1, or the District, should be given even
 10 “Partial Unitary Status”, which issue is presently on appeal to the 9th Circuit Court of Appeals.
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12 *Fisher* Plaintiffs’ Motion for Sanctions is supported by the attached Memorandum

13 of Points and Authorities, the separately filed Appendix of Exhibits, and the Court record.
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15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16
 17 **I. INTRODUCTION/MATERIAL FACTS**

18 Recently, *Fisher* Plaintiffs have received and confirmed information from the Tucson
 19 African American Community concerning the fact that Defendant Tucson Unified School District
 20 (hereinafter “the District”) had covertly and improperly contacted *Fisher* class members by
 21 *secretly* inviting certain hand-picked and uninformed members of said community to an exclusive
 22 or private dinner at the Tucson Viscount Hotel¹ on Thursday, January 30, 2020, at which dinner
 23 the TUSD #1 Superintendent, Dr. Trujillo, and a limited number of his staff, presented both
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 27 ¹ In sharp contrast, the District significantly failed to invite or purposely excluded
 28 both the named *Fisher* Representatives and the *Fisher* Representatives’ counsel, Rubin Salter, Jr., Esq., as well as other informed leaders of the African American Community such as the Director of the Tucson Urban League.

1 misleading and biased information suggesting that statistical data collected to date related to
2 progress made under the Consent Decree actually supported the District's claims that a finding of
3 "Unitary Status" was appropriate, and that the *Fisher* Plaintiffs had wrongfully opposed the
4 District's most recent request for "Unitary Status".

5 Thus, the District, by and through the specific actions of its own Superintendent, had
6 purposely not only improperly contacted specific members of the *Fisher* class, yet had also
7 intentionally or purposely interfered with the adverse class itself. In essence, and as hereafter
8 described, it is reasonably believed that the overarching intent of the District in having the
9 exclusive Viscount Hotel dinner was to "pick-off" and/or improperly influence specific
10 uninformed leaders of the African American Community in order to not only gain their support
11 for the District's position that a finding of Unitary Status was warranted, yet to showcase vis a vis
12 a misleading and biased power point presentation the District's "purported" good faith efforts to
13 carry out the provisions of the Consent Decree itself, and to improperly suggest that the Tucson
14 Unified School District had already successfully removed the vestiges of racial discrimination
15 throughout the District to the extent practicable. Regrettably, the net effect of the District's
16 improper contact and interference was to pit *Fisher* class members against each other.
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20 Not surprisingly, the following information was thereafter conveyed by those in attendance
21 to counsel for the *Fisher* Committee, and specifically by attorney Ms. Daisy M. Jenkins, Esq.
22 (hereafter Dr. Daisy M. Jenkins)² relating to this highly questionable and surreptitious meeting
23 between Defendant District and select members or leadership of the *Fisher* class of African
24 American families and students:
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28 ² See *Fisher* Plaintiffs' Appendix of Exhibits, Exhibit A, Affidavit of Daisy M
Jenkins, Esq.

- 1) That on January 29, 2020 Defendant Tucson Unified School District invited Dr. Daisy M. Jenkins to come to an invitation only dinner meeting featuring Dr. Gabriel Trujillo at the Viscount Hotel on January 30, 2020 (*See Fisher* Plaintiffs’ Appendix of Exhibits, Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p. 3);
- 2) That the invitation Dr. Jenkins received was through an e-mail she had personally received from Ms. Christina Chapa of African American Student Services (*Id.* at p. 3);
- 3) That Dr. Jenkins reasonably believed that the meeting would focus on African American Student Services, plus provide a plan to address ongoing issues of African American student academic performance, along with other related issues, such as inequities in student discipline which have regrettably included the disparate treatment and discipline of African American students (*Id.* at p. 3);
- 4) That the attendees of the 1/30/20 Viscount Hotel meeting with Dr. Trujillo and members of his staff interestingly included African American representation from the following groups:
- a. The NAACP
 - b. The Tucson Chapter of the Buffalo Soldiers
 - c. The “Prince Hall Masons of Tucson - Pima Lodge No. 10”
 - d. A Local Barber Shop
 - e. The Barba Williams Performing Arts Company;
 - f. I Am You 360
 - g. TEEM—Tucson Educational Empowerment for Minorities
 - h. Rising Star Baptist Church
 - i. Several African American Student Service Employees and other TUSD staff members
- (*See Fisher* Plaintiffs’ Appendix of Exhibits, Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p. 4);
- 5) That Dr. Jenkins was absolutely disturbed that the meeting actually centered around Dr. Trujillo and two (2) of his staff members, a statistician, and the woman that heads up Advanced Learning Programs, trying to put a positive spin on data that highlighted academic performance issues for African American students (*Id.* at p. 3);
- 6) That in spite of the abysmal data presented at the invitation only meeting (which meeting, once again, did **not** include either the named *Fisher* Committee, nor the *Fisher* Plaintiffs’ attorney Rubin Salter, Jr., Esq.), Dr. Trujillo tried to convince the audience, including Dr. Jenkins, that African American students were on an upward trend in their academic performance notwithstanding substantial evidence actually presented at the meeting to contrary (*See Fisher* Plaintiffs’ attached Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p. 4 and *attached* Copy of TUSD “Data” Presented at 1/30/20 TUSD Invitation Only Dinner with Local African American Leadership);

- 1 7) That by way of example of Dr. Trujillo’s unsupported arguments concerning an alleged upward
2 academic performance trend for African American students, Dr. Trujillo actually compared a
3 10% improvement in one area for African American students as better than analogous
4 improvements made by the students of University High School (hereafter “UHS”) (*See Fisher*
5 *Plaintiffs’* attached Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p. 4);
- 6 8) That Dr. Jenkins noted such a comparison was in reality an absurd comparison based on the fact
7 that UHS academic performance is at a much higher level than the alleged African American
8 student improvement (*Id.* at p. 4);
- 9 79) That a summary of the data presented showed the following:
- 10 a. African American students are still performing poorly in AZ Merit testing in ***all*** areas, especially
11 in Math;
- 12 b. African American students still experience suspensions and harsher discipline than other racial or
13 ethnic groups; and
- 14 c. African American students are still severely underrepresented in Advanced Learning Programs.
15 (*See Fisher Plaintiffs’* Appendix of Exhibits, Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p.
16 4, with *attached* Copy of TUSD “Data” Presented at 1/30/20 TUSD Invitation Only Dinner with
17 Local African American Leadership);
- 18 10) That it is noteworthy that when the presenter showed a graph with a straight or flat line at the
19 bottom related to African American participation in such Advanced Learning Programs (with
20 other racial groups trending upwards) that despite the presenter’s best efforts she could not paint
21 any positive picture whatsoever, whereby Dr. Jenkins actually commented that our African
22 American students were being flat-lined in said programs, and were actually on “life support”³
23 (*Id.* at p. 4, with *attached* Copy of TUSD “Data” Presented at 1/30/20 TUSD Invitation Only
24 Dinner with Local African American Leadership at pp. 40, 42, 44-45, 47);
- 25 11) That sadly, Dr. Jenkins noted that most of the select invitees appeared to be overwhelmed by the
26 statistical presentation, and were not necessarily fully understanding the presentation as

27 ³ It should be specifically noted that from the School Year 2017-18 counsel was able to
28 extrapolate or confirm Dr. Jenkin’s astute observations concerning the status of African American
Students being flat-lined or on “life support” related to the Advanced Learning Programs or
“ALP’s”. In sharp contrast, an analysis of the available data definitely shows that while 56% of
the students in self-contained GATE are Latino, and 40% are white, the percentage of African
American students is quite dismal as it is actually less than 1% (actually it is ***.007 or 7/1000 of***
1%). It is highly questionable given such actually existing data how the District or TUSD#1
could even suggest with a straight face that it had made sufficient progress related to removing the
vestiges of discrimination to the extent practicable.

1 evidenced by their asking little to no questions during or after the presentation (*See Fisher*
2 Plaintiffs' Appendix of Exhibits, Exhibit A, Affidavit of Daisy M Jenkins, Esq. at p. 4);

3 12) That Dr. Jenkins repeatedly voiced her concerns that attention should be paid by TUSD to the
4 real educational discrimination related issues, and challenged the notion of Dr. Trujillo and his
5 team trying to paint a rosy or positive picture of the data presented, which attempt actually spoke
6 volumes about the ongoing need for the right or more appropriate interventions within the
7 District with regard to African American Student membership (*Id.* at p. 4);

8 13) That Dr. Jenkins further addressed Dr. Trujillo, telling him that he needed to fix these recurring
9 problems and that he cannot expect African American Student Services to address the issues of
10 systematic and systemic racism in the District without fixing said recurring problems (*Id.* at p.
11 4);

12 14) That Dr. Jenkins also appropriately advised Dr. Trujillo that he is not only required to lead the
13 charge under the Federal Court approved and supervised consent decree as to making the
14 required changes to remedy the disparate treatment of African American students in TUSD, yet
15 that the discussed meeting did not show in any way that he was committed to actually fulfilling
16 this task (*Id.* at p. 4);

17 15) That regrettably, Dr. Trujillo's response to Dr. Jenkins was the same as he has responded to her
18 concerns in the past as to the ongoing disparate treatment of African American students in TUSD
19 #1 (ie. that he was merely going to push for Implicit Bias Training, which by itself is a meager
20 response to the cancerous situation that presently exists for African American students within the
21 District) (*See Fisher* Plaintiffs' Appendix of Exhibits, Exhibit A, Affidavit of Daisy M Jenkins,
22 Esq. at p. 4); and

23 16) That the meeting was both quite disappointing and insulting to Dr. Jenkins in that that
24 Dr. Trujillo and TUSD would come to an apparently hand-picked audience of select local
25 African American Community Leadership touting progress in the area of African American
26 student performance, when the very data that was presented showed just the opposite. (*Id.* at
27 p. 4, with *attached* Copy of TUSD "Data" Presented at 1/30/20 TUSD Invitation Only Dinner
28 with Local African American Leadership at pp. 40, 42, 44-45, 47).

29 It is further especially noteworthy that following receiving distressing reports from
30 members of the *Fisher* class or African American Community about the Viscount Hotel "dinner",
31 including the detailed report of Dr. Daisy M. Jenkins, Plaintiffs Fishers' counsel personally and
32 promptly contacted the District or Dr. Trujillo to inquire about the TUSD "dinner" as well as the
33 alleged improprieties related thereto, which inquiry included a specific question about the source
34 of funding for the "dinner" and whether or not it had been improperly paid for with Desegregation

1 funds, specifically inquiring by detailed e-mail⁴ as follows:

2 “Dr. Trujillo please add these additional agenda items for the meeting which will be held
3 on February 26, 2020 at 1:30PM

4 1. Please provide the following information for our 2-26-2020 meeting regarding the dinner that
5 TUSD African American Student Services Department hosted at the Viscount Suites Hotel on 1-
30-2020 for 50 select members of the African American Community.

- 6 a. How and who selected these invitees?
7 b. Please provide a list of the select members who were invited.
8 c. What was the criteria used to determine if he or she were eligible to be invited?

9 2. Copies of any materials that were given to invitee’s.

10 3. Did any TUSD officials lobby for support of the re-opening of
11 Wakefield Middle School, if so, who and why did he or she
support re-opening?

12 4. Did TUSD officials ask attendees to rally behind TUSD and
13 against the plaintiffs. Did they seek their support of District
position on Unitary Status.

14 5. Did Superintendent Trujillo recite misleading facts to the
15 attendee’s for example?

Here are the true facts:

- 16 a. ADE shows 2018-19 62% of African American students in TUSD were minimally proficient in
17 English [with] only 34% whites minimally proficient in English, and 63% of 2,933 in math.
18 b. Graduation rates for 2018-19 was 76.53% the lowest of any other racial group.
19 c. Black students are disciplined at 3.5 times as whites.
20 d. Less than 2% of University High School is black.
21 e. There are less black top-level administrators and principals than at any time in the last 15 years.

22 6. How much did the dinner cost and if paid for by TUSD, did
23 the funds come from 910G budgeted funds.

24 7. Who authorized payment?

25 8. What happened to the African American task force? Why is it
26 still getting funds in Deseg Budget.

27 9. Explain in detail how the \$260,00[0] dollars was spent on the

28 ⁴ See *Fisher* Plaintiffs’ Appendix of Exhibits, Exhibit #B; E-mail from Atty. Salter dated 2/13/20)

- 1 education of TUSD's black student.
- 2 a. Who authorized expenditures?
- 3 b. What schools or programs the money was spent on?
- 4 c. What sources, means and result were tracked and reported or codified in positive results.

5 10. How did you judge the response of this select group?

6 11. Was there a dinner for select attendee's of the Mexican Communities and Native American Communities?

7 Regards,
8 Rubin Salter, Jr."

9 (See Plaintiffs' Appendix of Exhibits, Exhibit #B; Email from Fisher Plaintiffs' Attorney Rubin Salter, Jr., Esq., dated 2/13/20)

10 Not surprisingly, a copy of Defendant TUSD#1's Purchase Order to pay for the exclusive
11 Viscount Hotel dinner held on 1/30/20 was also subsequently received by the *Fisher* Plaintiffs⁵,
12 firmly establishing that the dinner was a "Superintendent's Event that was apparently being paid
13 for by the African American Student Services or Desegregation Funds. See Plaintiffs' Appendix
14 of Exhibits, Exhibit #C; TUSD#1 Purchase Order for Exclusive Viscount Hotel Dinner, No.
15 12010614, dated 1/21/20.

16 Subsequent and successive emails sent by/received from Dr. Trujillo on 2/15/20 and
17 2/19/20 in response to *Fisher* Plaintiffs' counsel's 2/13/20 e-mail inquiries may be revelatory as
18 to Defendant's underlying motivations or "bad faith" in improperly contacting and interfering with
19 *Fisher* Plaintiff Class Members as neither the District nor its Superintendent actually denied any
20 of the alleged improprieties or concerns raised by the *Fisher* Committee's counsel of record⁶
21 related to their improper contact and interference with selected *Fisher* class members. In said e-
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26 ⁵ See Plaintiffs' Appendix of Exhibits, Exhibit #C; TUSD#1 Purchase Order for Exclusive Viscount Hotel Dinner, No. 12010614, dated 1/21/20.

27 ⁶ See *Fisher* Plaintiffs' Appendix of Exhibits, Exhibit #D; E-mails from Dr. Trujillo
28 dated 2/15/20 and 2/19/20.

1 mails, Dr. Trujillo neither denied that the 1/30/20 meeting had taken place, nor stated that the
 2 suggested or alleged improprieties or bad faith misconduct related to said meeting were not true,
 3 yet in fact substantially communicated Superintendent Trujillo's obvious dismay at not only being
 4 "caught in the act with his hand in the Cookie Jar" as to not only improperly contacting the *Fisher*
 5 class members in the first place, yet for being specifically called out by Plaintiffs' counsel of record
 6 as to the District's egregious conduct in blatantly attempting to interfere with and improperly
 7 influence said class members. *See Fisher* Plaintiffs' Appendix of Exhibits, Exhibit #D, E-mails
 8 from Dr. Gabriel Trujillo dated 2/15/20 and 2/19/20. As the result, Dr. Trujillo remarkably, yet
 9 sadly, responded to *Fisher* Plaintiffs' counsel in an e-mail dated 2/15/20 as follows:

11 "Good afternoon,
 12 I have provided you with the exact presentation that was shared with the community on
 13 January 30th. In reviewing the requested agenda items, I don't find them to be relevant to
 14 collaboratively discussing our USP implementation efforts or improving academic outcomes for
 15 African American students. The *Fisher* Plaintiff Representatives will receive an invitation to
 16 attend our next community update meeting.

16 **Gabriel Trujillo, Ed.D. / Superintendent"**

17 *See Fisher* Plaintiffs' attached Exhibit D, E-mails from Dr. Trujillo, dated 2/15/20 and 2/19/20.

18 Ironically, only four (4) days after the District #1 Superintendent or Dr. Trujillo
 19 unilaterally and conveniently made a determination that the *Fisher* Committee's counsel's
 20 poignant questions in his 2/13/20 e-mailed inquiry were not relevant to "continued collaboration"
 21 by the parties in advancing the Consent Decree as to attaining both desegregation and the ultimate
 22 goal of removing or eradicating the vestiges of racial discrimination in education in Tucson, the
 23 Superintendent abruptly and unilaterally cancelled the previously and long scheduled 3rd Quarter
 24 Collaborative Meeting that was to be held on 2/26/20⁷, without even the courtesy of sending an
 25

27 ⁷ *See Fisher* Plaintiffs' Appendix of Exhibits, Exhibit E, 1/21/20 E-mails
 28 confirming Third Quarter Collaborative Meeting Attendance on 2/26/20 by *Fisher*
 Plaintiffs Exhibit E, E-mails confirming 3rd Quarter Collaborative Meeting Attendance by

1 actual e-mail, yet with the following cryptic unilateral notice of cancellation:

2 **“From:** Trujillo, Gabriel, Gabriel.Trujillo@tusd1.org

3 **To:** Rubin Salter, Jr. rsjr3@aol.com”

4 **“Subject: Canceled:** Dr. Trujillo, TUSD Counsel and Deseg. Team, Fisher Counsel and
5 Plaintiffs (3rd Quarter)”

6 *See Fisher* Plaintiffs’ Appendix of Exhibits, Exhibit E, E-mails from Dr. Trujillo, dated 2/15/20
7 and 2/19/20.

8 It is very important to note that the 2/26/20 Third Quarter Collaborative Meeting had been
9 previously scheduled for nearly one month, or since 1/21/20, and attendance at said meeting by
10 *Fisher* Plaintiffs had been already confirmed by both parties. *See Fisher* Plaintiffs’ Appendix of
11 Exhibits, Exhibit E, E-mails confirming 3rd Quarter Collaborative Meeting Attendance by *Fisher*
12 Plaintiffs exchanged between Nicholas Roman (Assistant to Superintendent Trujillo) and *Fisher*
13 Plaintiffs’ attorney Rubin Salter, Jr., Esq.

14
15 **II. LEGAL ARGUMENT**

16 The United States District Court should sanction Defendant TUSD #1
17 for its backhanded effort as herein described in detail in contacting *Fisher* class members in order
18 to unduly influence them to support the District's “Unitary Status” claim, and cause dissension
19 within the class. *Supra*. Given that the present case involves the District Court monitored Consent
20 Decree between the parties related to *Fisher* Plaintiff’s constitutional right to an education free of
21 racial discrimination, the District’s improper contact and interference with the *Fisher* class
22 members in this case may constitute a violation of constitutional magnitude, entitling *Fisher*
23 Plaintiffs to both appropriate sanctions, including attorney’s fees and costs, as well as to the issuing
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Fisher Plaintiffs exchanged between Nicholas Roman (Assistant to Superintendent
28 Trujillo) and *Fisher* Plaintiffs’ attorney Rubin Salter, Jr., Esq.

1 a *Cease and Desist Order*.

2 While a District Court should generally issue sanctions under an applicable rule or statute
 3 if possible, it is not so limited, and may actually rely on its inherent powers to sanction bad faith
 4 misconduct. *Moser v. Bret Harte Union High School District*, 366 F.Supp. 2d. 944 (2005)
 5 [District Court has inherent power to sanction bad faith misconduct] citing *In re Akros*
 6 *Installation, Inc.*, 834 F.2d 1526, 1532 (9th Cir. 1987). A sanction imposed under the Court's
 7 inherent power requires, however, a specific finding of bad faith. *Roadway Express v. Piper*, 447
 8 U.S. 752, 767, 100 S.Ct. 2455 (1980), *Primus Auto Fin. Services v. Batarse*, 115 F.3d 644, 648
 9 (9th Cir. 1997), *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993). Moreover, sanctions
 10 for such "bad faith" misconduct may be imposed pursuant to the Court's inherent powers upon
 11 either an attorney or a party to a lawsuit. *Roadway Express*, 447 U.S. at 766, 100 S.Ct. 2455
 12 (1980).
 13
 14

15 Significantly, "bad faith" is defined by *Black's Law Dictionary* as follows:

16 "*Dishonesty of belief or purpose.*"⁸

17 It is highly arguable for the purposes of the present bad faith analysis under *Moser v. Bret*
 18 *Harte Union High School District*, and *In re Akros Installation, Inc.*, *supra*, that intentional and
 19 improper contact and interference with a disparate class for the purpose of influencing them with
 20 incorrect, biased and categorically false information constitutes *prima facie* bad faith misconduct
 21 that must be remedied in an appropriate manner, such as with the imposition of sanctions
 22 (including attorney's fees and costs) and the Court's entering a "Cease and Desist" Order.
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 24

25 In addition to bad faith misconduct providing a basis for the imposition of sanctions under
 26 the District Court's inherent authority, Federal courts have also recognized that they derive
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28 ⁸ *Black's Law Dictionary*, 9th Edition at p. 159.

1 authority to fashion remedies in education related desegregation and racial discrimination cases
2 from multiple sources, including the federal Court’s broad and flexible equitable powers to remedy
3 past wrongs in such cases. *Swann v.*
4 *Charlotte-Mecklenburg Bd. Of Ed*, 402 U.S. 1, 12-16 (1971).

5 Federal courts have also recognized their authority to impose remedial sanctions for *civil*
6 contempt related to misconduct committed outside of the presence of the Court itself. *United Mine*
7 *Workers of Am. v. Bagwell*, 512 U.S. 821, 827-29 (1994).

9 In such “cases involving the framing of equitable remedies to repair the denial of a
10 constitutional right[,] the task is to correct, by a balancing of the individual and collective interests,
11 the condition that offends the Constitution”. *Swann*, 402 U.S. at 15-16. By doing so, federal
12 Courts focus on three (3) factors when applying equitable principles in these cases. *Milliken v.*
13 *Bradley*, 433 U.S. 267, 281 (1977).

15 *First*, “with an equity case, the nature of the violation determines the scope of the remedy.
16 *Swann*, 402 U.S. at 16. “The remedy must therefore be related to the condition alleged to offend
17 the Constitution.” *Milliken*, 433 U.S. at 281.

19 *“Second, the decree must indeed be remedial in nature*, that is, it must be *designed as*
20 *nearly as possible to restore the victims of discriminatory conduct to the position they would have*
21 *occupied* in the absence of such conduct.” *Id.*

22 *“Third, the federal courts in devising a remedy must take into account the interests of state*
23 *and local authorities in managing their own affairs, consistent with the Constitution.*” However,
24 if the authorities “fail in their affirmative obligations...judicial authority may be invoked.”
25 *Milliken*, 433 U.S. at 281 (quoting *Swann*, 402 U.S. at 15). “Once a right and a violation have
26 been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for
27 breadth and flexibility are inherent in equitable remedies. *Swann*, 402 U.S. at 15. Equitable
28

1 remedies “must be tailored to remedy the specific harm alleged.” *Melendres v. Arpaio*, 784 F.3d
2 1254, 1265 (9th Cir. 2015) *cert. denied* 136 S.Ct. 799 (2016). “Nevertheless, the district court has
3 broad discretion in fashioning a remedy [and] is permitted to order ‘relief that the Constitution
4 would not of its own force initially require if such relief is necessary to remedy a constitutional
5 violation.’” *Id. quoting Toussaint v. McCarthy*, 801 F.2d 1080, 1087 (9th Cir. 1986). Therefore,
6 an equitable remedy may exceed the scope of a district court’s power only if it is ‘aimed at
7 eliminating a condition that does not violate the constitution or does not flow from such a
8 violation.’” *Id. quoting Milliken*, 433 U.S. at 282.

10 It is particularly noteworthy for the purposes of reviewing the District’s bad faith
11 misconduct in this case that in *Fisher v. Tucson Unified School District*, 652 F.3d 1131 (2011)
12 the 9th Circuit Court of Appeals recognized as of primary importance to its decision in that matter
13 that the lower Court’s finding or conclusion included a finding that “the school district had *failed*
14 *to act in good faith compliance with its [constitutionally mandated] desegregation obligations*
15 *which compliance was actually required under United States Supreme Court precedent. In*
16 *reversing the District Court’s determination that the TUSD#1 had attained “unitary” status the 9th*
17 *Circuit found or held that continued supervision over the Consent Decree was still required by the*
18 *District Court because “[t]he test to determine when unitary status has been achieved, and*
19 *accordingly, when federal court oversight may end, is well-established” and included the following*
20 *ultimate inquiry:*

23 “1) Whether the [constitutional violator] ha[s] complied in good faith with the
24 desegregation decree since it was entered; and

26 2) Whether the vestiges of past discrimination ha[ve] been eliminated to the extent
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28

1 practicable.⁹

2 Therefore, in this case the “District” or Tucson Unified School District was actually
3 required under applicable United States Supreme Court authority to act in *good faith* in the first
4 instance with regard to Consent Decree between the parties, whereby any failures to do so, or to
5 actually purposely act in *bad faith* with regard to complying with the desegregation decree itself,
6 may constitute a violation of constitutional magnitude, entitling Fisher Plaintiffs to not only
7 sanctions, yet appropriate constitutional remedies as well under the referenced United States
8 Supreme Court authority, including those cases involving racial discrimination and desegregation
9 in education, such as *Swann* and *Milliken, supra*.

10
11 In the present case, Defendant TUSD #1 (or “the District”), by and through its own
12 Superintendent Dr. Gabriel Trujillo, has committed acts involving bad faith misconduct, as well
13 as being violative of the *Fisher* Plaintiffs’ implicit constitutional rights memorialized under the
14 consent decree itself.

15
16 First, the District, through its own Superintendent, wrongly contacted and interfered with
17 *Fisher* Class Members in an effort to improperly influence them in favor of the District (and its
18 purported Unitary Status claim) and to set the various uninformed Class Members against
19 themselves, in an obvious effort to basically avoid having further Court supervision of the Consent
20 Decree (by doing an end run around the legal and procedural requirements necessary to actually
21 attain Unitary Status), through merely trying to convince the *Fisher* Class Members vis a vis a
22 power point presentation at an elaborate dinner, that *dishonestly* used incorrect and biased
23 information in said presentation to communicate that it had already accomplished such status by
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28 ⁹ *Fisher v. Tucson Unified School District* citing *Missouri v. Jenkins*, 515 U.S. 70, 89 (1995) (alterations in the original).

1 not only its purported good faith efforts under the decree, yet by purportedly removing the vestiges
2 of the original racial discrimination. *Supra*. Such planned, surreptitious, coercive and purposely
3 dishonest behavior requires that the District Court use its inherent powers to correct, admonish and
4 prevent further bad faith conduct on the part of the District in the future. Under applicable legal
5 authority in *Moser v. Bret Harte Union High School District*, and *In re Akros Installation, Inc.*,
6 *supra*, the District Court's use of its inherent power to sanction TUSD #1 by awarding attorney's
7 fees and costs would not only be justified, yet arguably required, in order to not only properly
8 administer the Consent Decree itself, yet to ensure its integrity for the future, by implicitly
9 "drawing a line in the sand" for the District, firmly establishing that such a course of conduct shall
10 not be tolerated.
11

12 Secondly, it is highly arguable the Superintendent's misconduct in contacting the *Fisher*
13 Class Members and interfering with them by dishonestly trying to influence them in favor of the
14 District's Unitary Status claim, and thus undermining the Consent Decree of the very parties to
15 this case which required good faith efforts in carrying out its provisions meant to promote and
16 ensure the constitutional rights of the *Fisher* class members, as well as the removal of the vestiges
17 of the original racial discrimination to the extent practicable which had motivated the egregious
18 educational segregation, actually was implicitly violative of *Fisher* Plaintiffs' constitutional rights
19 as well, militating an appropriate constitutional remedy under federal law in *Swann* and *Milliken*,
20 *supra*.
21

22 In applying the referenced *Milliken* three-factor analysis to the facts of this case, equitable
23 principles would also require an appropriate remedy under applicable federal law given the
24 following considerations.
25

26 First, considering the nature of the constitutional violation, or the District's improper
27 contact and interference with the *Fisher* class members, an equitable remedy including both the
28

1 sanctioning of the District with the attorney’s fees and costs related Fisher Plaintiffs’ present
2 motion, as well as the District Court’s entry of a “Cease and Desist” Order would definitely be
3 related to District’s described misconduct as such remedies are proximately related to violation
4 itself.

5 Secondly, such District Court order(s) providing for both an attorney fee/costs assessment
6 against the District, as well as a Cease and Desist Order, would be remedial, as such an order
7 would be implicitly designed, as nearly as possible, to restore the *Fisher* Plaintiffs or Class
8 Members to the position they would have occupied in the absence of such misconduct.

9
10 Third, the District Court in this case, by devising such a remedy involving both appropriate
11 sanctions and a Cease and Desist Order, would have taken into account the interests of local
12 educational authorities or School District and its interests in managing its own affairs consistent
13 with the Constitution and the Consent Decree of the parties, because since the educational authority
14 (ie. TUSD#1) has essentially *failed* in its affirmative obligations under the decree and applicable
15 law to continue to both work in *good faith* for its implementation and the removal of the vestiges
16 of racial discrimination, the District Court’s judicial authority may be invoked. *Milliken*, 433
17 U.S. at 281 (quoting *Swann*, 402 U.S. at 15). Given that the scope of a District Court’s equitable
18 powers to remedy such wrongs is broad under *Swann*, *supra*, and that the suggested equitable
19 remedies or sanctions are properly “tailored to remedy the specific harm alleged” that is, to end or
20 prevent the District’s further contact and interference with *Fisher* class members by Court imposed
21 sanction and order to cease and desist, *Melendres v. Arpaio*, *supra*, it would be appropriate for
22 the District Court intervene at this juncture, to both end the District’s misconduct and prevent
23 similar misconduct in the future.

24
25 Moreover, should the District argue that the Constitution would not of its own force
26 initially require such relief as that requested by the *Fisher* Plaintiffs, such remedies are nonetheless
27
28

1 appropriate and necessary to remedy the District's egregious constitutional violation in essentially
2 attempting to subvert the *Fisher* Class Members to their will by the herein described wholly
3 improper contact, interference and influence, using tactics which included both the
4 misrepresentation of incorrect and biased information to attain the District's insidious ends."

5 *Melendres v. Arpaio, supra, quoting Toussaint v. McCarthy, supra.*

6 Should the District Court believe that the requested sanctions and Cease and Desist Order
7 may be expansive of its present authority, applicable federal law actually provides that an equitable
8 remedy may exceed the scope of a district court's power if it is 'aimed at eliminating a condition
9 that does not violate the constitution or does not flow from such a violation.'" *Milliken*, 433 U.S.
10 at 282. In the present case, the District's improper contact and interference with *Fisher* class
11 members must be eliminated, even if it may not be considered an actual constitutional violation,
12 and the United States Supreme Court's decision in *Milliken* provides the authority for the District
13 Court to step at this juncture and end all improper conduct by the District with respect to the
14 *Fisher* class members. *Id.*

15 III. CONCLUSION

16 Defendant Tucson Unified School District #1, by and through its own Superintendent, Dr.
17 Gabriel Trujillo, has egregiously and improperly contacted the *Fisher* class members for the bad
18 faith or dishonest purpose of attempting to surreptitiously influence them to believe that full
19 Unitary Status has already been accomplished by the District, and to undermine the *Fisher* class
20 itself by coercing its membership to be at odds with itself based upon the same false or misleading
21 presentation of incorrect or biased facts at an exclusive dinner at the Viscount Hotel on Thursday,
22 January 30, 2020 that was ironically, yet improperly paid for by the District with desegregation
23 funding.

24 Under applicable federal law in in *Moser v. Bret Harte Union High School District*, and

1 *In re Akros Installation, Inc.*, *supra*, the District Court has the inherent power to sanction the
2 District for such bad faith misconduct. Moreover, federal constitutional authority cited herein,
3 especially United States Supreme Court authority in other school desegregation and racial
4 discrimination cases such as *Swann v. Charlotte-Mecklenburg Bd. Of Ed.* and *Milliken v. Bradley*
5 provide that the federal Court may impose appropriate remedies for constitutional violations in
6 cases involving desegregation and racial discrimination, so long as they are: 1) related to the
7 proscribed misconduct, 2) aimed at restoring the offended party to their original position had not
8 the misconduct taken place, and 3) narrowly tailored to remedy the specific harm alleged.

9
10 Therefore, given that the requested relief in *Fisher* Plaintiffs' Motion for Sanctions which
11 herein requests attorney's fees, costs and, most importantly, that an appropriate Cease and Desist
12 Order be entered against the District to prevent further improper contact and interference with
13 *Fisher* class members, is within the District Court's inherent powers to grant under *Moser v. Bret*
14 *Harte Union High School District*, and *In re Akros Installation, Inc.*, *supra*, and that such
15 sanctions are related to the District's bad faith misconduct, aimed at restoring *Fisher* Plaintiffs to
16 their original position had such misconduct not taken place and narrowly tailored to remedy the
17 specific conduct alleged, Plaintiffs' motion should be granted, whereby a Cease and Desist Order
18 should issue forthwith to prevent further misconduct by the District, and both attorney's fees and
19 costs related to the present motion should be awarded.

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21
22 **RESPECTFULLY SUBMITTED** this 18th day of March 2020.

23
24
25 */s/ Rubin Salter, Jr.*
26 RUBIN SALTER, JR., ESQ.
27 ATTORNEY FOR PLAINTIFFS FISHER
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CERTIFICATE OF SERVICE

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I hereby certify that on March 17, 2020, I electronically submitted the foregoing **MOTION TO IMPOSE SANCTIONS FOR BAD FAITH & UNETHICAL MISCONDUCT BY DEFENDANT TUCSON UNIFIED DISTRICT #1 FOR IMPROPER FISHER CLASS MEMBER CONTACT AND INTERFERENCE** 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/ECT registrants:

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