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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
**REPLY BRIEF SUPPORTING
FISHER PLAINTIFFS' MOTION
FOR SANCTIONS FOR
BAD FAITH AND UNETHICAL
MISCONDUCT BY DEFENDANT
TUCSON UNIFIED SCHOOL
DISTRICT #1 FOR IMPROPER
FISHER CLASS MEMBER CONTACT
AND INTERFERENCE**

(Assigned to: *Hon. David C. Bury*)

(Oral Argument Requested)

COMES NOW Plaintiffs *Fisher* Representatives, by and through counsel undersigned, respectfully submitting their Reply Brief to Defendant TUSD#1's Response filed in this matter on April 1, 2020 regarding *Fisher* Class Plaintiffs' Motion for Sanctions for Bad Faith and Unethical Misconduct by Defendant Tucson Unified School District #1 (hereafter the "District").

Fisher Plaintiffs' Reply Brief is supported by the attached Memorandum of Points and Authorities, the attached and previously filed exhibits, and the Court record.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant District essentially argues as follows: 1) that the District did not improperly contact and interfere with *Fisher* Class Members by inviting numerous members of the Tucson area African American community to an invitation only dinner at the Viscount Hotel on January 30, 2020 because the dinner was really a “community meeting” that was actually held four (4) weeks or a month early in place of a private meeting it had previously set and planned a year in advance, and had been consistently holding on originally a monthly and then a quarterly basis with *Fisher* Plaintiffs, yet that *Fisher* Plaintiffs did not want to attend same because members of the public would be present and interfere with the collaborative process the parties had established in holding said meetings with Superintendent Trujillo, and 2) that such a “community meeting” is not improper and is actually encouraged by the Unitary Status Plan. (Responsive Brief at pp. 2-8).

However, the District’s response is wholly disingenuous because it attempts to re-cast the surreptitiously held meeting meant to improperly influence specific hand-picked members of the African American community as something that it was not. The January 30, 2020 dinner was not a “community meeting” which took the place of a quarterly meeting with

1 Plaintiffs' *Fisher* that was long scheduled by the parties on February 26, 2020
2 at 1:30-3:00pm remarkably scheduled beforehand and a month after the
3 exclusive Viscount Hotel dinner, and which even more remarkably, was not
4 "cancelled" by Superintendent Trujillo until February 19, 2020, or three (3)
5 weeks after the Viscount Hotel. This undeniable truth is supported by the
6 exhibits already presented in this case including the District's (including
7 Superintendent Trujillo's) very own e-mails dated 2/15/20 and 2/19/20,
8 respectively, and strongly suggests that the District is trying to cover up its
9 own misconduct with another lie. The United States Supreme Court clearly
10 recognized in *The Chesire* that a party's attempt to cover up its own
11 misconduct may be considered "prima facie evidence of [its original]
12 fraudulent intention". *Id.*, 70 U.S. 231, 234 (1865).

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17 In this case, it would appear that the District is attempting to cover up
18 its alleged misconduct in improperly contacting and interfering with *Fisher*
19 class members through its holding a secret dinner at the Viscount Hotel on
20 January 30, 2020 for the purpose of garnering support for an award of unitary
21 status vis a vis a misrepresentation of the truth through a presentation of biased
22 facts by now falsely claiming that the clandestine dinner was actually a
23 "community meeting". Sadly, the evidence presented by the parties in their
24 moving and responsive pleadings firmly establishes the District's bad faith
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1 under the United States Supreme Court's longstanding *Cheshire* decision.
2 *Supra*. Moreover, the attached declarations of both *Fisher* Committee
3 Member Dr. Lorraine Richardson and Tucson Urban League *Interim* Director
4 Clarence Boykins further confirms that the District's attempts to re-cast the
5 improper Viscount Hotel dinner as a "community meeting" taking the place
6 of a previously scheduled quarterly collaborative meeting between the parties
7 is simply not true. *Supra*.

10 Perhaps the renowned author Mark Twain said it best with respect the
11 District's misapprehension of the truth in this case, for he once said:
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13 *"A lie goes around the world in the time that it takes truth to put its*
14 *boots on."*

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16 Hopefully, *truth shall put its boots* in the case at bar and through *Fisher*
17 Plaintiffs' pleadings and exhibits, and establish both the impropriety of the
18 District's actions surrounding and including the January 30, 2020 clandestine
19 Viscount Hotel dinner¹, as well the appropriateness of *Fisher* Plaintiffs'
20 requested sanctions in this case which are primarily meant to prevent further
21 misconduct in the future by the District.
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24 II. CONTROVERTING STATEMENT OF FACTS

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27 ¹ Which "Clandestine or Secret Dinner" was not only improperly paid
28 for with desegregation funds, yet which fact was also "*covered up*" or
improperly and purposely hidden by the District as evidenced by the District's
own documentation. *Infra*.

1 The District attempts to cast the improper 1/30/20 Viscount Hotel
2 dinner *misrepresentation* of biased facts to select African American invitees
3 as merely being a “community meeting” which the District now claims took
4 the place of a previously scheduled quarterly collaborative meeting between
5 the parties that was previously scheduled to occur approximately 4 weeks or
6 one month later on 2/26/20 from 1:30-3:00pm. Defendant District’s Response
7 at pp. 2-8. However, a review of *Fisher* Plaintiffs’ Exhibits B, D, and E, as
8 well as the attached Declarations of *Fisher* Class Member Dr. Lorraine
9 Richardson and Tucson Urban League CEO Clarence Boykin which definitely
10 further confirm that the District’s assertions are false, and are not to be
11 believed.
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16 First of all, a review of *Fisher* Plaintiffs’ previously filed Exhibits B, D,
17 and E show that the contrary to the District’s assertions otherwise, even after
18 the Viscount Hotel dinner on 1/30/20, both parties believed that the 1/26/20
19 collaborative meeting was going to occur based upon the following:
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22 1) That just thirteen (13) days before the previously scheduled
23 collaborative meeting to be held on 2/26/20 and two (2) weeks after
24 the 1/30/20 clandestine Viscount Hotel dinner, *Fisher* Plaintiffs’
25 attorney sent an e-mail to Superintendent Trujillo specifically
26 requesting that the agenda for the 2/26/20 meeting be modified to
27 include “additional agenda items for the meeting which will be held
28 on February 26, 2020 at 1:30PM” to include the District
“provid[ing] the following information for our 2-26-20 meeting
regarding the dinner” “hosted at the Viscount Suites Hotel on 1-30-

1 2020 for 50 select members of the African American
2 Community...”,²

3 2) That two (2) days after *Fisher* Plaintiffs’ counsel’s 2/13/20 e-mail
4 to Superintendent Trujillo, Dr. Trujillo sends an e-mail response on
5 2/15/20 which does not even suggest to Plaintiffs’ counsel that the
6 2/26/20 meeting has already been held on 1/30/20, yet merely states
7 that the requested information was not “relevant to collaboratively
8 discussing our USP implementation efforts or improving academic
9 outcomes for African American students”;³

10 3) Subsequently, just one (1) day after Dr. Trujillo’s e-mail
11 dismissing the requested additional agenda items as not being
12 “relevant” to the joint collaborative intentions of the parties for the
13 2/26/20 quarterly meeting, the TUSD #1 Assistant to Superintendent
14 Trujillo (Nicholas Roman) sent an e-mail on 2/16/20 (just 10 days
15 before the scheduled 3rd Quarterly meeting) to confirm *Fisher*
16 Plaintiffs’ counsel Rubin Salter’s attendance “for the 3rd quarter
17 meeting on Wednesday, February 26th at 1:30pm, with counsel
18 responding that the “Fishers were planning to attend the meeting
19 with Dr. Trujillo on Wednesday, February 26th at 1:30pm”;⁴ and

20 4) That it was actually one (1) week or seven (7) days before the
21 scheduled February 26, 2020 3rd Quarterly meeting that Dr. Trujillo

22 ² See *Fisher* Plaintiffs’ Appendix of Exhibits Supporting Motion for
23 Sanctions; Plaintiffs’ Exhibit #B; E-mail from *Fisher* Plaintiffs’ Attorney
24 Rubin Salter, Jr. Esq. dated 2/13/20.

25 ³ See *Fisher* Plaintiffs’ Appendix of Exhibits Supporting Motion for
26 Sanctions; Plaintiffs’ Exhibit #D; E-mails from TUSD #1 Superintendent Dr.
27 Gabriel Trujillo dated 2/15/20 and 2/19/20.

28 ⁴ See *Fisher* Plaintiffs’ Appendix of Exhibits Supporting Motion for
Sanctions; Plaintiffs’ Exhibit E, E-mails confirming 3rd Quarter Collaborative
Meeting Attendance by *Fisher* Plaintiffs exchanged between Nicholas Roman
(Assistant to Superintendent Trujillo) and *Fisher* Plaintiffs’ attorney Rubin
Salter, Jr., Esq..

1 sent a “one word” e-mail on 2/19/20 which just said “Cancelled” in
2 the subject line of the e-mail which was notably in response to Fisher
3 counsel’s 2/16/20 e-mail without any further explanation
4 whatsoever information.⁵

5 Clearly, if what the District proposes to be the truth is correct, it had ample
6 opportunity to not only notify a change in both the date and purpose of the 3rd
7 Quarterly meeting if such had actually been the case, yet to properly communicate
8 and give advance notice that the purported “community meeting” was actually
9 intended to be the 3rd Quarterly meeting. Moreover, it is telling that the District is
10 totally unable to produce any evidence whatsoever that they actually notified the
11 *Fisher* Committee or *Fisher* Plaintiffs’ counsel of the change in the date, time and
12 place of the purported 3rd Quarterly meeting⁶ or Viscount Hotel dinner, or of the
13 District’s newfound or purported purpose or intention that it was going to substitute
14 the 1/30/20 Viscount Suites Hotel “community meeting” dinner for the previously
15 scheduled 2/26/20 3rd Quarterly meeting. Obviously, the District, in its disingenuous
16 attempt at defending the 1/30/20 Viscount Hotel dinner, has been “hoisted by [its’]
17 own petard” to quote the famous playwright Shakespeare from “Hamlet”. In other
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24 ⁵ See *Fisher* Plaintiffs’ Appendix of Exhibits Supporting Motion for
25 Sanctions; Plaintiffs’ Exhibit #D; E-mails from TUSD #1 Superintendent Dr.
26 Gabriel Trujillo dated 2/15/20 and 2/19/20.

27 ⁶ Which were not only scheduled on a particular date well in advance,
28 yet were always held from 1:30-3:00pm in the “Gray Room” of the TUSD #1
Offices or Headquarters located at 1010 E. 10th St., Tucson, Arizona. *Infra*.

1 words, the District's own e-mails have now come back to *haunt* it by establishing
2 the incredulity of the District's response to Petitioner's Motion for Sanctions for Bad
3 Faith/Unethical Misconduct.

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5 Secondly, a review of other available and evidence provides additional
6 confirmation of the District's futile attempt to fraudulently "recast" the wholly
7 improper *Viscount Suites Hotel dinner misrepresentation of incorrect and/or biased*
8 *facts and questionable data* as a "community meeting". This other evidence
9 includes: 1) the attached Declaration of Dr. Lorraine Richardson giving the actual
10 historical background of the monthly and quarterly collaborative meetings between
11 the *Fisher* Committee and Dr. Trujillo as being previously scheduled long in
12 advance and always being held at the same place, same time and without any
13 refreshments, and further providing sworn testimony that the *Fisher* Committee was
14 never invited to the District's clandestine Viscount Suite Hotel dinner extravaganza
15 and that she only learned of the "dinner" a few days *after* the fact⁷, 2) the attached
16 Declaration of the Tucson Urban League Interim Director Clarence Boykins
17 providing insightful information from his perspective related to the true nature of the
18 58 African American individuals who were actually invited to and ultimately
19 attended the 1/30/20 Viscount Suites dinner itself as *not* truly representing the TUSD
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26 ⁷ See *Fisher* Plaintiffs' Attached Exhibit #F; Declaration of Fisher
27 Committee Member Dr. Lorraine H. Richardson.
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1 #1 African American community nor having appropriate authority to legitimately
2 represent same⁸, 3) the statistical breakdown of the African American Community
3 both invited to and in attendance at the suspect and improper Viscount Hotel dinner
4 based upon the District's own provided responsive evidence⁹, and 4) additional
5 evidence from the District's own records showing that the District was trying to hide
6 the fact that TUSD #1 desegregation funds were being used improperly to finance
7 the Viscount Suites Hotel exclusive dinner itself.¹⁰
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10 First, contrary to the District's suggestion otherwise, the Viscount Suite Hotel
11 "dinner" could not be considered in any way, shape or remote form, as actually
12 taking the place of the previously scheduled 2/26/20 3rd Quarterly meeting between
13 the Fisher Committee and Dr. Trujillo. *See Fisher* Plaintiffs' attached Exhibit #F;
14 Declaration of Fisher Committee Member Dr. Lorraine H. Richardson at pp. 1-3.
15 Not only were the initially monthly and subsequently quarterly meetings always long
16 before previously scheduled, yet they were always held at the same relatively small
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21 ⁸ *See Fisher* Plaintiffs' Attached Exhibit #G; Declaration of Tucson
22 Urban League Interim Director Clarence Boykins.

23 ⁹ *See Fisher* Plaintiffs' Attached Exhibit #H; Defendant TUSD #1
24 Response Exhibits 3 and 5.

25 ¹⁰ *See Fisher* Plaintiffs' Appendix of Exhibits Supporting Motion for
26 Sanctions; Plaintiffs' Exhibit #C; TUSD#1 Purchase Order for Exclusive
27 Viscount Hotel Dinner, No. 12010614, dated 1/21/20.
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1 “Gray Room” of the District’s Offices at 1010 E. 10th Street, and refreshments were
2 *never* served. *Id.* at p. 2. Also, Dr. Trujillo’s own declaration in this case
3 disingenuously suggesting that the *Fisher* Committee had been previously contacted
4 and advised that the 3rd Quarterly Meeting had been moved up approximately one
5 (1) month and was being held at the Viscount Suites Hotel with a complimentary
6 dinner definitely runs afoul of the truth because Dr. Richardson, a highly respected
7 member of the Tucson African American Community and lifetime educator and
8 guardian/promoter of African American academic achievement simply states this
9 did not occur, and the District is unable to provide any type of paper trail or hard
10 evidence contradicting Dr. Richardson’s sworn testimony. *Id.* at pp. 2-3.
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15 Furthermore, Tucson Urban League Interim Director Clarence Boykins’
16 declaration substantially undermines the District’s suggestion that the improper
17 Viscount Suites Hotel dinner was actually a “community meeting” because given
18 his longstanding history and experience as an actual leader in the Tucson African
19 American Community, his review of the named individuals invited to the improper
20 dinner and those who actually attended strongly confirms that those 58 individuals
21 invited to same were not actually recognized leaders within the Tucson African
22 American Community, and further suggests that the 22 individuals in attendance
23 may have lacked appropriate authority to represent or speak for the Tucson African
24 American Community itself. *See Fisher* Plaintiffs’ Attached Exhibit #G;
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1 Declaration of Tucson Urban League Interim Director Clarence Boykins at pp. 1-2.
2 For example, although the District suggests or purports that Ms. Ashley Coker
3 represented the Tucson Urban League (TUL) at the alleged “community meeting”,
4 Interim Director Boykins takes great exception to the District’s description of her as
5 implicitly being such a representative when he himself was never invited to the
6 District’s improper 1/30/20 meeting nor did he grant any type of authority to
7 Ms. Coker to represent the TUL in any legitimate or representative capacity. Id. at
8 pp. 2-3.
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12 Finally, additional evidence provided by the District belies its suggested
13 defense that the improper 1/30/20 dinner was actually a “community meeting” that
14 was open to those who wished to attend which did not improperly use TUSD
15 desegregation funds. Response at pp. 2-6.
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17 Statistically speaking, if only 22 of the invited 58 individuals actually attended
18 the improper Viscount Hotel dinner, how could a mere 37.9% or less than 50.1% of
19 this group (which purposely did not include either the *Fisher* Committee or
20 recognized leaders within the African American Community) actually be considered
21 a “community meeting”. Strikingly, the District provides absolutely no
22 demographic information whatsoever related to those invited and those who
23 ultimately attended (with, if the District’s admission is correct, only 4 of the 22 in
24 attendance actually having children who attended TUSD #1 schools), whereby how
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1 may the District now make the belated proclamation (or even description) that the
2 improper dinner was a “community meeting”, let alone that it was really the
3 3rd Quarterly meeting of the parties that was mysteriously moved up 27 days on the
4 calendar without proper notice or advisory? *See Fisher Plaintiffs’ Attached Exhibit*
5 *#H; Defendant TUSD #1 Response Exhibits 3 and 5.*

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8 Moreover, if the Viscount Suites Hotel dinner was *not* really a clandestine
9 exclusive dinner of those the District hoped to influence in favor of Unitary Status,
10 how may the District now explain that its own financing document or purchase order
11 for the improper dinner was cryptically billed to the TUSD #1 African American
12 Student Services Department (ie. \$2500 for “Room Rental” only w/ no reference of
13 the money actually being the room and dinner), and that the individual who signed
14 the purchase order is the same person who apparently sent out the exclusive
15 invitations to those secretly invited and *not* sent to those *purposely* excluded such as
16 the *Fisher* Committee and *Fisher* Plaintiffs’ counsel? *See Fisher Plaintiffs’*
17 *Appendix of Exhibits Supporting Motion for Sanctions; Plaintiffs’ Exhibit #C;*
18 *TUSD#1 Purchase Order for Exclusive Viscount Hotel Dinner, No. 12010614, dated*
19 *1/21/20.*

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Once again, “[a] lie goes around the world in the time that truth can put its
boots on”! Sadly, rather than admit its indiscretion, it is respectfully submitted that
the District has now, in the words of Shakespeare’s *Hamlet* “been hoisted by [its’]

1 own petard”, and substantially so by its own evidence.
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3 **III. LEGAL ARGUMENT**
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5 As previously argued in Fisher Plaintiffs’ Motion for Sanctions, the
6 United States District Court should sanction Defendant TUSD #1 for its
7 backhanded effort in contacting *Fisher* class members in order to unduly
8 influence them to support the District’s “Unitary Status” claim, and in the
9 hopes of causing dissension within the class. Given the foregoing additional
10 facts and evidence, which substantially includes the District’s own
11 documentary evidence which it cannot deny, *Fisher* Plaintiffs should be
12 awarded appropriate sanctions, including attorney’s fees and costs, as well as
13 the issuance of a *Cease and Desist Order*.
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17 It is understood that a District Court should generally issue sanctions
18 under an applicable rule or statute if possible, yet is not so limited, and may
19 actually rely on its inherent powers to sanction bad faith misconduct. *Moser*
20 *v. Bret Harte Union High School District*, 366 F.Supp. 2d. 944 (2005)
21 [District Court has inherent power to sanction bad faith misconduct] *citing In*
22 *re Akros Installation, Inc.*, 834 F.2d 1526, 1532 (9th Cir. 1987). While a
23 sanction imposed under the Court’s inherent power requires a specific finding
24 of bad faith, *Roadway Express v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455
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1 (1980), *Primus Auto Fin. Services v. Batarse*, 115 F.3d 644, 648 (9th Cir.
2 1997), *Yagman v. Republic Ins.*, 987 F.2d 622, 628 (9th Cir. 1993),
3 under the United States Supreme Court's longstanding 1865 civil war decision
4 involving a British ship (the *Chesire*) that improperly tried to cover up the fact
5 that it was actually trying to run the Union's blockade of the South during the
6 War to Free our African American brethren, it is suggested that the District
7 Court now has substantial evidence of the Tucson Unified School District's
8 bad faith in improperly contacting and attempting to undermine the *Fisher*
9 class members because the Defendant District's attempt to cover up its own
10 original misconduct in this case may be considered as "prima facie evidence
11 of [its original] fraudulent intention". *The Chesire*, 70 U.S. 231, 234 (1865).
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17 IV. CONCLUSION

18 As described in briefing, Defendant Tucson Unified School District #1,
19 by and through its own Superintendent, Dr. Gabriel Trujillo, has egregiously
20 and improperly contacted the *Fisher* class members for the bad faith or
21 dishonest purpose of attempting to surreptitiously and improperly influence
22 them at an improper and biased dinner presentation to believe that full Unitary
23 Status has already been attained or accomplished by the District.
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27 Under applicable federal law in in *Moser* providing that a District Court
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1 has the authority to sanction a party for bad faith misconduct, *supra*, as well
2 as United States Supreme Court authority in *The Chesire* providing that bad
3 faith may be proven by a party's attempt to cover up its own original
4 misconduct as such may be considered as "prima facie evidence of [its
5 original] fraudulent intention", *supra*, the District Court should now impose
6 appropriate remedies for the alleged constitutional violations in this case
7 which involves desegregation and racial discrimination, because such
8 sanctions would be: 1) related to the proscribed misconduct, 2) aimed at
9 restoring the offended party to their original position had not the misconduct
10 taken place, and 3) narrowly tailored to remedy the specific harm alleged.
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15 Based upon the foregoing and previously presented facts and legal
16 argument the District Court should issue an appropriate Cease and Desist
17 Order forthwith to prevent further misconduct by the District, and award both
18 attorney's fees and costs related to the present motion.
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20 **RESPECTFULLY SUBMITTED** this 8th day of April 2020.
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23 */s/ Rubin Salter, Jr.*
24 RUBIN SALTER, JR., ESQ.
25 ATTORNEY FOR PLAINTIFFS FISHER
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CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2020, I electronically submitted the foregoing **REPLY BRIEF SUPPORTING FISHER PLAINTIFFS' MOTION FOR SANCTIONS FOR BAD FAITH AND UNETHICAL MISCONDUCT BY DEFENDANT TUCSON UNIFIED SCHOOL DISTRICT #1** 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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