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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ELIZABETH SINCLAIR, CHARLOTTE
KLARKE, FELLOWSHIP OF CHRISTIAN
ATHLETES, an Oklahoma corporation, and
FELLOWSHIP OF CHRISTIAN
ATHLETES OF PIONEER HIGH SCHOOL,
an unincorporated association,

Plaintiffs,

v.

SAN JOSÉ UNIFIED SCHOOL DISTRICT
BOARD OF EDUCATION, in its official
capacity, NANCY ALBARRÁN, in her
official and personal capacity, HERBERT
ESPIRITU, in his official and personal
capacity, PETER GLASSER, in his official
and personal capacity, and STEPHEN
MCMAHON, in his official and personal
capacity,

Defendants.

CASE No. 4:20-cv-2798-HSG

JUDGE: Hon. Haywood S. Gilliam, Jr.

**REVISED CONSENTED ENTRY OF
JUDGMENT AND PERMANENT
INJUNCTION**

Courtroom: Courtroom 2 – 4th Floor
Judge: Hon. Haywood S. Gilliam, Jr.

1 Plaintiffs Elizabeth Sinclair; Charlotte Klarke; Fellowship of Christian Athletes, an Oklahoma
2 corporation (“FCA”); and Fellowship of Christian Athletes of Pioneer High School, an unincorporated
3 association (“Pioneer FCA”) (collectively “Plaintiffs”), and Defendants Nancy Albarran, Stephen
4 McMahon, Peter Glasser, and Herbert Espiritu (collectively “Defendants”), all of whom are sued in both
5 their official and individual capacities, are the Parties to this case.¹ The Board of Education of the San
6 Jose Unified School District (“District”) was originally named as a defendant, but was dismissed from
7 the case. The Parties agree to enter into this Consented Entry of Judgment and Permanent Injunction
8 (“Consent Judgment”) providing for judgment in Plaintiffs’ favor and a permanent injunction, as
9 follows, in order to resolve all claims raised by Plaintiffs against Defendants and the District in this case.

10 Plaintiffs Elizabeth Sinclair, Charlotte Klarke, and FCA filed this case in 2020, and Pioneer FCA
11 joined this case in 2021, alleging various federal constitutional and statutory violations on the part of
12 Defendants. Plaintiffs moved for a preliminary injunction, which this Court denied in an unreported
13 opinion. 2022 WL 1786574 (N.D. Cal. June 1, 2022). The Ninth Circuit reversed that decision in an
14 opinion reported at 46 F.4th 1075. The Ninth Circuit then agreed to rehear the case en banc and vacated
15 the panel’s decision. 59 F.4th 997 (mem.). Shortly after the en banc oral argument, the Ninth Circuit
16 reinstated Plaintiffs’ injunction pending appeal and ordered Defendants “forthwith to recognize student
17 chapters affiliated with the Fellowship of Christian Athletes, including the Pioneer High School student
18 chapter, as official ‘Associated Student Body’ approved clubs.” 64 F.4th 1024, 1025. Then, on
19 September 13, 2023, the Ninth Circuit reversed the district court’s denial of a preliminary injunction
20 and directed this Court “to enter an order reinstating FCA’s ASB recognition.” 82 F.4th 664, 696. The
21 history of this litigation and the events leading up to it are recounted at length in the en banc Ninth
22 Circuit’s September 2023 decision.

23 Plaintiffs and Defendants, desiring that this action be settled by appropriate consent judgment and
24 without the burden of protracted litigation, agree to the jurisdiction of this Court over the Parties and the
25 subject matter of this action. Subject to the Court’s approval of this consent judgment and permanent
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28 ¹ Charlotte Klarke has since married and taken the last name TerBest.

1 injunction, the Parties waive a hearing and findings of fact and conclusions of law on all issues, including
2 those unaddressed by the Ninth Circuit’s en banc decision.

3 The Parties further agree that this Consent Judgment—in addition to the separately signed Settlement
4 Agreement and Release—resolves all issues raised in the Complaint, and is final and binding on
5 Plaintiffs, Defendants, and their respective officials, agents, employees, and successors, and all persons
6 acting on their behalf or in active concert and in participation with them, including the San Jose Unified
7 School District Board of Education. The Parties have entered into a separate Settlement Agreement and
8 Release to fully and finally resolve the entire dispute between them. The Settlement Agreement is
9 contingent upon complete and unaltered entry of this Consent Judgment.

10 It is therefore, ORDERED, ADJUDGED, and DECREED as follows:

11 **Ninth Circuit En Banc Decision and Injunctive Relief**

12 In light of the decision of the en banc Ninth Circuit, Plaintiffs have demonstrated success on the
13 merits of their First Amendment Free Exercise and Free Speech claims and their Equal Access Act
14 claim, established irreparable injury in relation to those claims, and shown that injunctive relief is in the
15 public interest and supported by the equities. *See Fellowship of Christian Athletes v. San Jose Unified*
16 *Sch. Dist. Bd. of Ed.*, 82 F.4th 664 (9th Cir. 2023) (en banc).

17 **Resolution of the Litigation**

18 A. Defendants agree that they shall not appeal from any ruling that adopts this Consent Judgment.
19 Defendants further agree that the relief granted herein is fair and equitable, and that they will defend the
20 terms of this Consent Judgment if it is challenged in court. However, notwithstanding the above, they
21 reserve the right to seek reconsideration or appeal should the Court not enter the entirety of the relief
22 agreed to herein.

23 B. Plaintiffs agree that they shall not appeal from any ruling that adopts this Consent Judgment.
24 Plaintiffs further agree that the relief granted herein is fair and equitable, and that they will defend the
25 terms of this Consent Judgment if it is challenged in court. However, notwithstanding the above, they
26 reserve the right to seek reconsideration or appeal should the Court not enter the entirety of the relief
27 agreed to herein.

1 C. The parties agree that judgment should be entered in Plaintiffs’ favor on Counts I, II, III, IV, V,
2 and VIII, and that Plaintiffs are prevailing parties in this litigation. Plaintiffs agree that if this Consent
3 Judgment is adopted by the Court in its entirety: 1) their remaining claims shall be dismissed with
4 prejudice pursuant to Federal Rule of Civil Procedure 41(a); 2) their claims against Defendants Stephen
5 McMahon, Peter Glasser, and Herbert Espiritu in their individual and official capacities, and their claims
6 against Nancy Albarran in her individual capacity, shall be dismissed with prejudice; and 3) this
7 unmodified Agreement shall be construed as a self-executing notice of voluntary dismissal by Plaintiffs
8 of such remaining claims with prejudice pursuant to Rule 41(a).

9 D. The Parties agree that, in the event this Consent Judgment is appealed or subsequently modified,
10 Plaintiffs may appeal that action, and, in the event the Consent Judgment is not upheld, Plaintiffs may
11 re-assert any or all of Claims VI, VII, and IX-XII in that circumstance and Defendants may re-assert all
12 defenses.

13 E. The Parties agree that as of the date that this Consent Judgment is entered by the Court, they will
14 begin to perform their respective obligations under it.

15 F. The Parties agree that Plaintiffs are the prevailing parties and therefore are entitled to reasonable
16 attorneys’ fees and costs, the amount of which is resolved by the Parties’ separate Settlement Agreement.

17 **Injunction and Order**

18 Accordingly, in light of the foregoing and upon Plaintiffs’ and Defendants’ consent:

19 1. The Court has determined that it has jurisdiction over the matters alleged in Plaintiffs’ Complaint
20 and that venue is proper in this Court.

21 2. The Court has determined that this Consent Judgment is fair, reasonable, equitable, lawful, and
22 in the public interest.

23 3. For the 2023-24 school year, Defendant Nancy Albarran, in her official capacity as the
24 Superintendent of the San José Unified School District, and her successors, agents, and all those acting
25 in concert with her, including the San Jose Unified School District Board of Education, are REQUIRED
26 to grant to all student groups within the District that are affiliated with Plaintiff FCA, including Plaintiff
27 Pioneer FCA, status as officially recognized student groups, including as “Associated Student Body”
28 approved student groups, and to confer upon them all of the benefits, rights and privileges of such status

1 and all of the benefits, rights and privileges that are otherwise conferred by each such group’s school
2 site upon any other noncurriculum related student group.

3 4. For the 2023-24 school year and each future school year, Defendant Nancy Albarran, in her
4 official capacity as the Superintendent of the San José Unified School District, and her successors,
5 agents, and all those acting in concert with her, including the San Jose Unified School District Board of
6 Education, shall ensure that the District and its officers, employees, agents, and all those acting in concert
7 with any of them, are PROHIBITED from:

- 8 a. denying any student group within the District that is affiliated with Plaintiff FCA (“FCA
9 group”) (i) status as an officially recognized student group (including as an official
10 “Associated Student Body” approved student group), or (ii) any benefit, right, or privilege
11 attendant to such status or otherwise conferred by such FCA group’s school site upon any
12 noncurriculum related student group, because such FCA group requires its leaders to affirm
13 their agreement with certain of the FCA group’s religious beliefs (including religious
14 beliefs pertaining to human sexuality or marriage) and to conduct themselves in
15 accordance with such beliefs (such requirement shall be referred to herein as “leadership
16 requirements”); or
- 17 b. imposing on any FCA group any rule that (i) has the effect of prohibiting or penalizing
18 such group’s application of its leadership requirements, or (ii) does not apply equally to all
19 other noncurriculum related student groups at such group’s school site.

20 5. The term “noncurriculum related student group” has the same meaning as it does in the Equal
21 Access Act, 20 U.S.C. §§ 4071-4074, as interpreted in *Board of Education v. Mergens*, 496 U.S. 226
22 (1990). For purposes of this Consent Judgment only, the category of noncurriculum related student
23 group shall not be understood to include groups of students or school activities that officially represent
24 the school district, are supervised or financed by the school district, and gather for performance before
25 an audience or spectators (such as a school football team or school play); or District-run programs that
26 are both led and supervised by District employees or sub-contractors and that are neither initiated nor
27 run by students (such as a mentorship group organized and run by a school social worker).

28 6. ORDERED that this permanent injunction shall take effect immediately; and

1 7. ORDERED that, because the parties' Agreement is approved without modification by this Court,
2 pursuant to paragraphs C and D of the Agreement, Plaintiffs' notice of voluntary dismissal with
3 prejudice of Counts VI, VII, and IX-XII, of all claims against the Defendants in their individual
4 capacities, and of all claims against Defendants McMahon, Espiritu, and Glasser, is hereby entered and
5 those claims are DISMISSED; and

6 8. ORDERED that Plaintiffs are the prevailing party and entitled to attorneys' fees, the amount of
7 which is resolved by the Parties' separate Settlement Agreement; and

8 9. ORDERED that this Court shall retain jurisdiction over this action for purposes of implementing
9 and enforcing the final judgment and any additional orders necessary, including over any disputes arising
10 from the separate Settlement Agreement.

11 IT IS SO ORDERED.

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13 Dated: 5/6/2024
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18 THE HONORABLE HAYWOOD S. GILLIAM, JR.
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