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9 **AMERICAN CENTER FOR LAW & JUSTICE**

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11 **Attorneys for Child Evangelism Fellowship, Inc. of West Orange County**

12 **UNITED STATES DISTRICT COURT**
13
14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 **CHILD EVANGELISM**
16 **FELLOWSHIP, INC. OF WEST**
17 **ORANGE COUNTY,**

18 **Plaintiff,**

19 **vs.**

20 **BUENA PARK SCHOOL**
21 **DISTRICT, GREG MAGNUSON,**
22 **IN HIS OFFICIAL AND**
23 **INDIVIDUAL CAPACITIES AS**
24 **SUPERINTENDENT, AND**
25 **KELVIN TSUNEZUMI, IN HIS**
26 **OFFICIAL AND INDIVIDUAL**
27 **CAPACITIES AS ASSISTANT**
28 **SUPERINTENDENT,**

Defendants.

FILED
2012 NOV 19 AM 10:23
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY _____

Case No. **SACV12-2012-DAC/ETK**

COMPLAINT FOR:

- 1) **DAMAGES;**
- 2) **INJUNCTIVE RELIEF; AND**
- 3) **DECLARATORY RELIEF**

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COMPLAINT

Plaintiff Child Evangelism Fellowship, Inc. of West Orange County (“Child Evangelism Fellowship” or “CEF”), by and through counsel, brings this action for relief against Buena Park School District, Greg Magnuson, and Kelvin Tsunezumi, and hereby states as follows:

INTRODUCTION

1. Buena Park School District (“BPSD” or the “District”), pursuant to the California Education Code, has, by policy, opened its school facilities for use by members of the community for a wide variety of purposes, including a number of speech-related purposes. Pursuant to these policies, Plaintiff Child Evangelism Fellowship of West Orange County (“CEF”) requested use of District facilities, after school hours, for the purpose of holding Good News Club meetings, which provide educational and recreational activities for students from a Biblical perspective. Although the District’s policies permit nonprofit groups organized to promote youth activities to use District facilities free of charge, the District informed Plaintiff it would have to pay for the use of District facilities.

2. Despite multiple requests by CEF for access to District facilities on the same terms as other similar non-religious organizations, the District has persisted in its demand that CEF, unlike other non-religious nonprofit youth organizations, must pay the District’s direct costs for any use of its facilities, solely because of the religious nature of CEF and its Good News Club activities.

JURISDICTION AND VENUE

3. This civil rights action raises federal questions under the First and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983.

1 departments that maintain and operate all services and programs provided within
2 the District.

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4 **FACTUAL ALLEGATIONS**

5 10. California Education Code §§ 38130-38139 are collectively
6 commonly known and cited as the “Civic Center Act.”

7 11. California Education Code § 38131(a) establishes “a civic center at
8 each and every public school facility and grounds within the state where . . .
9 clubs[] and associations formed for recreational, educational, political,
10 economic, artistic, or moral activities of the public school districts . . . may meet
11 and discuss, from time to time, as they may desire, any subjects and questions
12 that in their judgment pertain to the educational, political, economic, artistic, and
13 moral interests of the citizens of the communities in which they reside.”

14 12. California Education Code § 38134(a) provides that “[t]he
15 governing board of any school district shall authorize the use of any school
16 facilities or grounds under its control, when an alternative location is not
17 available, to nonprofit organizations, and clubs or associations organized to
18 promote youth and school activities”

19 13. California Education Code § 38134(b) provides that “the governing
20 board may charge an amount not to exceed its direct costs for use of its school
21 facilities. Each governing board that decides to levy these charges shall first
22 adopt a policy specifying which activities shall be charged an amount not to
23 exceed direct costs.”

24 14. California Education Code §§ 38131(b)(3) and 38134(d) require the
25 governing boards of California school districts to charge a fee “at least equal to
26 the district’s direct costs” to any church or religious organization using school
27 facilities or grounds for “[t]he conduct of religious services for temporary
28 periods.”

1 15. The District’s Board Policy (“BP”) 1330, entitled “Use of School
2 Facilities,” “authorizes the use of school facilities by community groups for
3 purposes provided for in the Civic Center Act”

4 16. BP 1330 expressly “authorizes the use of school facilities without
5 charge by nonprofit organizations, clubs or associations organized to promote
6 youth and school activities.”

7 17. BP 1330 provides that “[o]ther groups requesting the use of school
8 facilities under the Civic Center Act shall be charged at least direct costs.”

9 18. BP 1330 states that the nonprofit youth organizations authorized to
10 use District facilities at no charge include, but are not limited to, the Girl Scouts,
11 Boy Scouts, and Camp Fire, Inc.

12 19. The District’s Administrative Regulation (“AR”) 1330, entitled
13 “Use of School Facilities,” provides that “[s]ubject to district policies and
14 regulations, school facilities and grounds shall be available to citizens and
15 community groups as a civic center” for an enumerated list of purposes. Among
16 those purposes are “[p]ublic, literary, scientific, recreational, educational or
17 public agency meetings”; “[t]he discussion of matters of general or public
18 interest”; and “[t]he conduct of religious services for temporary periods, on a
19 one-time or renewable basis, by any church or religious organization.”

20 20. CEF operates an after-school youth program called the Good News
21 Club, which consists of educational lessons from the Bible, the singing of songs,
22 memorization of Bible verses, stories about missionaries, and games or other
23 recreational activities focused on the lesson’s themes and morals.

24 21. Good News Clubs exist to build strong moral and spiritual character
25 into the lives of children.

26 22. CEF’s Good News Clubs involve moral, educational, and
27 recreational activities for youth.

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1 23. CEF does not categorize or describe its Good News Club activities
2 as religious worship services.

3 24. CEF currently has Good News Clubs that meet after school hours,
4 free of charge, in the facilities of other California school districts, including the
5 Garden Grove School District.

6 25. Upon information and belief, other nonprofit youth organizations,
7 including the Boy Scouts, meet in BPSD facilities free of charge.

8 26. On September 28, 2011, CEF, through its then-Missionary Director
9 Brenda Corn, requested to use school facilities after school hours at Gorden H.
10 Beatty School, an elementary school within the Buena Park School District, for
11 Good News Club meetings.

12 27. In a letter dated October 27, 2011, Assistant Superintendent
13 Tsunezumi informed CEF that the District would charge CEF \$123.34 for each
14 90-minute meeting period for which CEF used school facilities between
15 November 2011 and May 2012, as well as a \$1,000 security deposit and a \$25
16 processing fee, for a total of \$4,355.18.

17 28. On December 20, 2011, CEF provided the District with a written
18 discussion of relevant law related to the District's stated intention to charge CEF
19 for facilities use while permitting other nonprofit youth organizations to use
20 facilities free of charge for similar non-religious purposes.

21 29. In a letter dated January 23, 2012, Assistant Superintendent
22 Tsunezumi reiterated the District's intention to charge CEF for facilities use,
23 stating that to do so would be "appropriate and equitable."

24 30. On March 7, 2012, CEF, through legal counsel, issued another
25 letter to the District discussing the application of relevant law to CEF's request
26 to use District facilities on the same terms that other nonprofit youth
27 organizations are permitted to do so.

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1 31. In a letter dated March 23, 2012, the District responded to CEF's
2 then-Missionary Director Brenda Corn. Assistant Superintendent Tsunezumi,
3 writing on behalf of the District, first expressed surprise that "an organization as
4 prominent and wide reaching as [CEF]," which, he assumed, "[c]ertainly . . . has
5 the resources to pay this fee," would refuse to do so.

6 32. Mr. Tsunezumi additionally asserted that the Good News Club's
7 activities "are a children's worship service" and noted that the California
8 Education Code permits school districts to "charg[e] religious organizations an
9 amount at least equal to direct costs." Mr. Tsunezumi requested clarification as
10 to the difference between CEF's Good News Club meetings and a worship
11 service.

12 33. In a letter dated April 16, 2012, CEF, through counsel, issued a
13 response to the District's March 23 letter. This letter described the substance of
14 the Good News Club's activities, explained that the Club's activities constitute
15 moral teaching and activities from a Biblical perspective – not a religious
16 worship service – and provided yet another statement of applicable law. Through
17 this letter, CEF once again requested use of District facilities in the same manner
18 and on the same basis as other nonprofit groups that promote youth activities.

19 34. To date, the District has provided no response to this letter.

20 35. Because of the District's refusal to permit CEF to use its facilities
21 free of charge as other nonprofit organizations promoting youth activities are
22 permitted to do, CEF has not, to date, held a Good News Club for students of
23 Buena Park School District.

24 36. The First Amendment to the United States Constitution protects the
25 rights to the freedom of speech and the free exercise of religion from
26 governmental infringement.

27 37. The First Amendment to the United States Constitution prohibits
28 excessive governmental entanglement with religion.

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THIRD CAUSE OF ACTION
Violation of CEF's Fourteenth Amendment Right to
Equal Protection of the Laws
(42 U.S.C. § 1983)

55. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

56. The Fourteenth Amendment to the United States Constitution provides, in relevant part, "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

57. The District has treated CEF differently from other nonprofit organizations using District facilities for similar non-religious activities by attempting to charge CEF a fee for use of District facilities because of the religious nature of CEF and its Good News Club meetings.

58. The District's disparate treatment of CEF does not serve any compelling governmental interest through the least restrictive means available and thus violates CEF's right to the equal protection of the laws.

59. Wherefore, Plaintiff requests the relief set forth below in the prayer for relief.

FOURTH CAUSE OF ACTION
Violation of the Establishment Clause of the First Amendment
(42 U.S.C. § 1983)

60. Plaintiff repeats and realleges each of the foregoing allegations in this Complaint.

61. The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law . . . respecting an establishment of religion"

62. The District's determination that CEF's Good News Club activities constitute a religious worship service creates an excessive entanglement

1 between the government and religion in violation of the Establishment Clause of
2 the First Amendment.

3 63. Wherefore, Plaintiff requests the relief set forth below in the prayer
4 for relief.

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6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff Child Evangelism Fellowship, Inc. of West
8 Orange County respectfully requests that the Court enter judgment against
9 Defendants Buena Park School District, Greg Magnuson, and Kelvin
10 Tsunezumi, and provide Plaintiff with the following relief:

11 (A) A declaration stating that Defendants violated CEF's right to free
12 speech;

13 (B) A declaration stating that Defendants violated CEF's right to the
14 free exercise of religion;

15 (C) A declaration stating that Defendants violated CEF's right to the
16 equal protection of the laws;

17 (D) A declaration stating that Defendants violated the Establishment
18 Clause of the First Amendment;

19 (E) A declaration stating that California Education Code
20 §§ 38131(b)(3) and 38134(d) are facially unconstitutional;

21 (F) An injunction prohibiting Defendants from treating CEF differently
22 than other nonprofit organizations using BPSD facilities for similar youth
23 activities;

24 (G) Reasonable attorneys' fees, costs, and other costs and
25 disbursements in this action pursuant to 42 U.S.C. § 1988; and

26 (H) All other further relief to which CEF may be entitled.

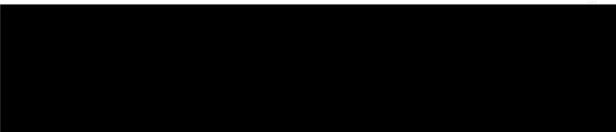
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28 Respectfully submitted this _____ day of _____ 2012.

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