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12 UNITED STATES DISTRICT COURT
13 EASTERN DISTRICT OF CALIFORNIA

15 PLANS, Inc.,

16 Plaintiff,

17 v.

18 SACRAMENTO CITY UNIFIED
19 SCHOOL DISTRICT, TWIN RIDGES
ELEMENTARY SCHOOL DISTRICT,
20 DOES 1-100,

21 Defendants.

CASE NO. CIV.S-98-0266 FCD PAN

**DEFENDANTS' JOINT OBJECTIONS TO
PLAINTIFF'S EXHIBITS**

Trial Date: September 12, 2005
Time for Hearing on Objections: 11:00 a.m.
Courtroom 2
The Honorable Frank C. Damrell, Jr.

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1 I.

2 INTRODUCTION TO OBJECTIONS

3 Defendants Sacramento City Unified School District and Twin Ridges Elementary School
4 District hereby jointly present the following objections to Plaintiff PLANS, Inc.’s exhibits. An
5 unusually high number of objections are included because Defendants’ anticipate that in the
6 unusual circumstances of this case, the vast majority of PLANS’ exhibits will be inadmissible.
7 This expectation is based, in part, on the limited number of witnesses who actually are on the
8 final witness lists who are therefore available to testify about the exhibits or about foundational
9 matters. The expectation of inadmissibility is also based on the fact that on their face, most of
10 PLANS’ exhibits include hearsay that does not fit any recognizable exception. As described
11 more specifically below, PLANS is also unlikely to be able to establish foundational prerequisites
12 such as authentication, personal knowledge and the existence of underlying facts that are essential
13 to show relevance under Federal Rules of Evidence 104(b) and 1008.

14 **Note Regarding Format of this Document:** For easy reference and to avoid needless
15 repetition, Section II below provides the general points and authorities for the particular kinds of
16 objections made below. Section III contains the specific objections that Defendants make to
17 PLANS’ individually numbered exhibits.

18 II.

19 THE RULES OF EVIDENCE AND OTHER AUTHORITIES
20 IN SUPPORT OF DEFENDANTS’ OBJECTIONS

21 **A. Conditional relevance -- as preliminary questions for the court – FED. R. EVID.**
104(b) and 1008.

22 **1. Text of FED. R. EVID. 104(b).**

23 Federal Rule of Evidence 104(b) states: “When the relevancy of evidence depends upon
24 the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction
25 of evidence sufficient to support a finding of the fulfillment of the condition.” FED. R. EVID.
26 104(b).

27 **2. Text of FED. R. EVID. 1008.**

28 Similarly, Federal Rule of Evidence 1008 states in pertinent part: “When the admissibility

1 of other evidence of contents of writings, recordings or photographs under these rules depends
2 upon the fulfillment of a condition of fact, the question whether the condition has been fulfilled is
3 ordinarily for the court to determine. ... “ FED. R. EVID. 1008.

4 **3. Discussion of conditional relevance as preliminary questions for the court.**

5 "Relevancy is not an inherent characteristic of any item of evidence but exists only as a
6 relation between an item of evidence and a matter properly provable in the case." *Huddleston v.*
7 *United States*, 485 U.S. 681, 689, 108 S.Ct. 1496, 1501 (1988), quoting Advisory Committee's
8 Notes on FED. R. EVID. 401, 28 U.S.C. App., p. 688. Because relevance is contextual, Rule
9 104(b) serves the *role of enforcing the relevance rule* (FED. R. EVID. 402)¹ when the relevance of
10 one piece of evidence is necessarily dependent (conditional) upon a sufficient foundational
11 showing of the existence of an underlying fact. For example, in *Huddleston, supra*, a criminal
12 defendant was charged with selling stolen goods and was found in the possession of 500 stolen
13 videotapes. The Court pointed out that “the evidence that petitioner was selling the televisions
14 was relevant under the Government’s theory only if the jury could reasonably find that the
15 televisions were stolen.” *Id.* at 1501. “Such questions of relevance conditioned on a fact are
16 dealt with under Federal Rule of Evidence 104(b).” *Id.* The Supreme Court describes the Court’s
17 process for determining the sufficiency of foundation under Rule 104(b) as follows:

18 In determining whether the Government has introduced sufficient
19 evidence to meet Rule 104(b), the trial court neither weighs
20 credibility nor makes a finding that the Government has proved the
21 conditional fact by a preponderance of the evidence. The court
22 simply examines all the evidence in the case and decides whether
23 the jury [trier of fact] could reasonably find the conditional fact--
24 here, that the televisions were stolen--by a preponderance of the
25 evidence.

23 *Id.* at 1501. As indicated below, a high portion of the Plaintiff’s evidence in this case will not be
24 admissible because PLANS cannot make the foundational showing necessary to establish the
25 conditional relevance of its exhibits.

26
27
28 ¹ See paragraph C below for the text of Rule 402.

1 4. The rules of conditional relevance as applied to PLANS' exhibits consisting of
2 writings by Rudolf Steiner.

3 a. Trial Phase I – conditional relevance.

4 Anthroposophy is the alleged “religion” in Plaintiff’s case. PLANS asserts that
5 anthroposophy, an alleged religion, unconstitutionally permeates everything at each of the
6 elementary schools involved in this case.

7 PLANS’ will be unable to produce the required foundations for relevance (under Federal
8 Rules of Evidence, Rules 104(b), 402 and 1008) at Phase I of the trial. At that phase, PLANS
9 will bear the burden of producing evidence showing what anthroposophy is in the first place, and
10 whether anthroposophy is a religion. A mere showing that Rudolf Steiner personally held
11 spiritual beliefs will not suffice.

12 In an amicus brief dated July 15, 2004, the Anthroposophical Society in America, Inc.
13 described anthroposophy to this Court as a “cognitive methodology, a path to Knowledge” --
14 without any system of beliefs.² In other words, the official anthroposophist view is that
15 anthroposophy is an approach to *epistemology* (a philosophical *methodology* for obtaining
16 knowledge) without any *metaphysics* (philosophical *conclusions* or ultimate beliefs).

17 Separate and apart from anthroposophy, Rudolf Steiner was an extremely prolific writer
18 and lecturer in many other subject matter areas ranging from education of the young, care of the
19 disabled, agriculture, medicine, architecture, science, religion and the arts. He founded separate
20 organizations and movements in connection with some of these other interests. Thus, PLANS
21 will be faced with the foundational task of establishing that Steiner was wearing his
22 anthroposophy “hat,” as distinguished from one of his many other “hats” when a specific Steiner
23 statement in an exhibit was written or spoken. Thus, PLANS will have to show, as a foundational
24 matter, that any statement of spiritual beliefs or conclusions offered into evidence in Phase I
25 somehow constitute beliefs that are *components* of an anthroposophical “*creed*” or *canon of*
26

27 ² See Amicus Curiae Brief of the Anthroposophical Society in America In Support of Defendants,
28 dated July 15, 2004, p. 9, line 15 through p. 10, line 6.

1 *ethics*³ -- rather than the personal beliefs of Rudolf Steiner, or perhaps the viewpoints of one of
2 the other organizations that Steiner founded. Such a task for PLANS is daunting indeed,
3 especially in view of the fact that the Anthroposophical Society itself says it has no such creed or
4 canon. But without that kind of showing, the opinions or statements of Rudolf Steiner (or of
5 others who write about his beliefs) are irrelevant to important issues presented at Trial Phase I:
6 (1) what is *anthroposophy*, and (2) does *anthroposophy* promulgate a set of beliefs that are
7 religious in nature and so fundamental and so well entrenched among anthroposophists that they
8 collectively constitute a religious *creed* or a canon of ethics?; and (3) if so, what are the
9 fundamental, defining beliefs or ultimate conclusions of anthroposophy?

10 But even if anthroposophy of today could be shown to have any particular viewpoints or
11 conclusions as defining features, another foundational question would still arise: did Steiner
12 intend that anthroposophists as a group be required to subscribe to his personal opinions as stated
13 in that particular exhibit? Another underlying foundational fact of relevance would be whether
14 anthroposophists of today (i.e. more than three-quarters of a century after Steiner's death in 1925)
15 necessarily subscribe to the viewpoints stated in the particular exhibit. And, if PLANS is offering
16 the exhibit to establish that anthroposophy of today has a "creed," PLANS would have to
17 establish the foundational fact that there are any set of viewpoints or conclusions in particular that
18 operate like a religious creed or "Articles of Faith" that anthroposophists of today are expected to
19 espouse.

20 **b. Trial Phase II – conditional relevance.**

21 But even if PLANS were to establish that anthroposophy of today is a religion for
22 Establishment Clause purposes, at Phase II of the trial PLANS would have to establish the
23 existence of necessary, underlying facts – i.e. the "facts" upon which the relevance of the exhibit
24 in question is conditioned. One such "fact" that PLANS would have to show is that the contents

25 ³ The Ninth Circuit's opinion in *Alvarado v. City of San Jose*, 94 F.3d 1223 (9th Cir. 1996)
26 demonstrates that the absence of certain religious indicia, such as a creed and/or a set of moral obligations,
27 is properly considered in determining whether something is a religion: "The New Age proponents cited by
28 plaintiffs clearly indicate that there is no New Age organization, church-like or otherwise; no membership;
no moral or behavioral obligations; no comprehensive creed; no particular text, rituals, or guidelines; no
particular object or objects of worship; no requirement or suggestion that anyone give up the religious
beliefs he or she already holds. In other words, anyone's in and 'anything goes.'" *Id.* at 1229-30.

1 of the particular exhibit is one of the viewpoints included in anthroposophy’s “creed” (as
2 distinguished from any free-floating personal opinion of Rudolf Steiner, or a component of one of
3 Steiner’s other subject-matter movements). Another such necessary foundational “fact” would be
4 that the mere existence of any such viewpoint has the substantive *effect* of endorsing religion in
5 any of the particular elementary schools in this case or of otherwise violating the other
6 constitutional provisions at issue.

7 **c. Summary of conditional relevance issues affecting PLANS’ exhibits.**

8 In short, crucial foundational evidence of conditional relevance will be completely
9 missing if all PLANS can show is that Rudolf Steiner, an individual, possessed personal beliefs
10 and conclusions of a spiritual nature. PLANS must be required to make an offer of proof of the
11 existence of each, necessary, underlying fact upon which the relevance of the exhibit is
12 conditioned. Failing that, all of PLANS exhibits containing statements by Rudolf Steiner, must
13 be ruled inadmissible under Rules 104(b), 402, and 1008.

14 **5. Application of foundational requirement for conditional relevance to other**
15 **exhibits.**

16 For exactly the same reasons as stated in subparagraph 4 above, the writings or statements
17 of other people than Steiner that PLANS offers as exhibits on the nature or viewpoints of
18 anthroposophy are dependent upon the same foundational showing of the same kinds of
19 underlying facts. Without such a showing to establish relevance, such exhibits are inadmissible
20 under Rules 104(b), 402, and 1008.

21 **B. Doctrine of completeness (FED. R. EVID. 106).**

22 Federal Rule of Evidence 106 states: “When a writing or recorded statement or part
23 thereof is introduced by a party, an adverse party may require the introduction at that time of any
24 other part or any other writing or recorded statement which ought in fairness to be considered
25 contemporaneously with it.”

26 **C. Relevance (FED. R. EVID. 401-402, 104(b)).**

27 Evidence is relevant if it has “any tendency to make the existence of any fact that is of
28 consequence to the determination of the action more probable or less probable than it would be

1 without the evidence.” FED. R. EVID. 401. Under Rule 402, “[a]ll relevant evidence is admissible
2 except as otherwise provided[.]” FED. R. EVID 402.

3 **D. Character evidence (FED. R. EVID. 404(a)).**

4 Federal Rule of Evidence 404(a) states: “Evidence of a person’s character or a trait of
5 character is not admissible for the purpose of proving action in conformity therewith on a
6 particular occasion.”

7 **E. Foundational showing of personal knowledge – FED. R. EVID. 602 and 104(b).**

8 Federal Rule of Evidence 602 states: “A witness may not testify to a matter unless
9 evidence is introduced sufficient to support a finding that the witness has personal knowledge of
10 the matter. Evidence to prove personal knowledge may, but need not, consist of the witness’ own
11 testimony. This rule is subject to the provisions of rule 703, relating to opinion testimony by
12 expert witnesses.”

13 **F. Lay opinion – FED. R. EVID. 701.**

14 Federal Rule of Evidence 701 states: “If the witness is not testifying as an expert, the
15 witness’ testimony in the form of opinions or inferences is limited to those opinions or inferences
16 which are (a) rationally based on the perception of the witness and (b) helpful to a clear
17 understanding of the witness’ testimony or the determination of a fact in issue.”

18 **G. Expert opinion – FED. R. EVID. 702-705.**

19 Federal Rule of Evidence 702 states: “If scientific, technical, or other specialized
20 knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a
21 witness qualified as an expert by knowledge, skill, experience, training, or education, may testify
22 thereto in the form of an opinion or otherwise.”

23 Federal Rule of Evidence 703 states:

24 The facts or data in the particular case upon which an expert bases an opinion or
25 inference may be those perceived by or made known to the expert at or before the
26 hearing. If of a type reasonably relied upon by experts in the particular field in
27 forming opinions or inferences upon the subject, the facts or data need not be
28 admissible in evidence in order for the opinion or inference to be admitted. Facts
or data that are otherwise inadmissible shall not be disclosed to the jury by the
proponent of the opinion or inference unless the court determines that their
probative value in assisting the jury to evaluate the expert’s opinion substantially
outweighs their prejudicial effect.

1 Federal Rule of Evidence 704 states:

2 (a) Expert testimony in the form of an opinion
3 or inference otherwise admissible is not objectionable because it embraces an
4 ultimate issue to be decided by the trier of fact.

5 (b) No expert witness testifying with respect to the mental state or condition of
6 a defendant in a criminal case may state an opinion or inference as to whether the
7 defendant did or did not have the mental state or condition constituting an element
8 of the crime charged or of a defense thereto. Such ultimate issues are matters for
9 the trier of fact alone.

10 Federal Rule of Evidence 705 states:

11 The expert may testify in terms of opinion or inference and give reasons therefor
12 without first testifying to the underlying facts or data, unless the court requires
13 otherwise. The expert may in any event be required to disclose the underlying
14 facts or data on cross-examination.

15 **H. Hearsay -- FED. R. EVID. 801(c), 802 and 805.**

16 **1. Text of Rule 801(c).**

17 Federal Rule of Evidence 801(c) states: “‘Hearsay’ is a statement, other than one made by
18 the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the
19 matter asserted.”

20 **2. Text of Rule 802.**

21 Federal Rule of Evidence 802 states: “Hearsay is not admissible except as provided by
22 these rules or by other rules prescribed by the Supreme Court pursuant to statutory authority or by
23 Act of Congress.”

24 **3. Text of Rule 805.**

25 Federal Rule of Evidence 805 states: “Hearsay included within hearsay is not excluded
26 under the hearsay rule if each part of the combined statements conforms with an exception to the
27 hearsay rule provided in these rules.”

28 **4. Authentication is not sufficient to evade the hearsay rule.**

Authentication is not sufficient to evade the hearsay rule. *See* 5 J. B. Weinstein,
WEINSTEIN’S Evidence, ¶ 901(a)[02], at 901-28 (1996) (“A document is not admissible simply
because it has been authenticated. For example, if offered to prove the truth of assertions made in
it, the document will need to meet hearsay requirements.”)

1 **I. Authentication – FED. R. EVID. 901(a).**

2 Federal Rule of Evidence 901(a) states: “The requirement of authentication or
3 identification as a condition precedent to admissibility is satisfied by evidence sufficient to
4 support a finding that the matter in question is what its proponent claims.”

5 **J. Privacy.**

6 “State and federal statutory and common law is the basic source of an individual’s right to
7 privacy.” *Crain v. Krehbiel*, 443 F. Supp. 202, 208 (N.D. Cal. 1977). In addition to common
8 law, statutory confidentiality provisions apply. Student information is confidential pursuant to
9 California Education Code sections 49073 *et seq.* and the Family Educational Rights Privacy Act
10 (20 U.S.C. § 1232g).

11 **III.**
OBJECTIONS TO SPECIFIC EXHIBITS

12 **PLAINTIFF’S EXHIBIT NO. 1**

13 *Bob [Robert] Anderson’s Expert Report dated January 23, 1999*

14 **A. OBJECTION: Hearsay -- FED. R. EVID. 801-802.**

15
16 There is no hearsay exception under the Federal Rules of Evidence which transforms a
17 witness’ own prior hearsay statements into admissible evidence just because the witness later
18 includes that hearsay while speaking under oath. *See U.S. v. Check*, 582 F.2d 668, 678-79 (2nd
19 Cir. 1978).

20 **B. OBJECTION: This Court’s final pre-trial order precluded PLANS’ use of this**
defense expert’s testimony (FED. R. CIV. PROC. 16).

21
22 Defendants also object on the ground that this Court’s final pre-trial order filed April 20,
23 2005 states that “Plaintiff will not be permitted to call defendants’ designated expert witnesses,
24 Robert L. Anderson, and Dr. Douglas Sloan. . . .” (Order, page 11, lines 2-3.) Plaintiff cannot
25 evade the effects of the Court’s Order by submitting the hearsay report of one of those same
26 expert witnesses.

27 **C. OBJECTION: Lack of authentication (FED. R. EVID. 901(a)).**

28 Additionally, this exhibit cannot be properly authenticated without Mr. Anderson’s

1 testimony. As noted above, this Court's Order of April 20, 2005 prohibited Plaintiff from calling
2 Mr. Anderson who is Defendants' expert.

3 **PLAINTIFF'S EXHIBIT NO. 2**

4 *Resume of Crystal Tilton Olson, Ed.D.*

5 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

6 The resume of an expert whose testimony cannot be offered by the Plaintiff (*see* pre-trial
7 order filed April 20, 2005, page 11, lines 2-3) and whose name does not appear on either of the
8 two final witness lists (see attachments A and B to the Order of April 20, 2005) is hearsay on its
9 face, has no probative value, and cannot be authenticated in the absence of its author. The court
10 has also ruled that Plaintiff cannot call this expert witness who had been previously designated by
11 the Defendants. *See* pretrial conference order dated April 20, 2005, p.11, lines 2 through 4.

12 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

13 Since Dr. Olson is not on any witness list for the trial, her resume has no probative value.

14 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

15 This exhibit cannot be authenticated in the absence of its author.

16 **PLAINTIFF'S EXHIBIT NO. 3**

17 *"Learning that Grows with the Learner: An Introduction to Waldorf Education"*

18 **A. OBJECTION: Hearsay -- FED. R. EVID. 801(c), 802 and 805.**

19 This article was relied upon by a defense expert, Dr. Crystal Tilton Olson – a witness the
20 Plaintiff cannot call (see Pre-Trial Order filed April 20, 2005, page 11, lines 2-3.) Dr. Olson's
21 reliance on this article is not relevant since she is not on either of the two final witness lists. (*See*
22 attachments A and B to the Order of April 20, 2005).

23 The court has also ruled that Plaintiff cannot call this expert witness who had been
24 previously designated by the Defendants. *See* pretrial conference order dated April 20, 2005,
25 p. 11, lines 2 through 4.

26 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

27 Since Dr. Olson is not on any witness list for the trial, the fact she may have reviewed any
28 articles has no probative value.

1 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

2 This exhibit cannot be authenticated in the absence of its author.

3 **PLAINTIFF'S EXHIBIT NO. 4**

4 *Foundation Year Book List 1993–1994*

5 **A. OBJECTION: Hearsay -- FED. R. EVID. 801(c), 802 and 805.**

6 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

7 A college book list that is over 10 years old lacks probative value in an injunctive relief
8 action tried in 2005. Defendants also object that the book list lacks any probative value unless
9 Plaintiff can first establish under Federal Rules of Evidence, Rules 104(b) and 1008 the following
10 preliminary facts: (1) that anthroposophy is a religion; (2) that any “religion” of anthroposophy is
11 taught in the foundation year courses, and (3) that “foundation year” classes at Rudolf Steiner
12 College have any current relevance to public school education in the Defendant districts.

13 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

14 In discovery, this document was included as Exhibit O to the Deposition of Eugenie Scott.
15 This witness is not included on either of the final witness lists (see Attachments A and B to the
16 Order of April 20, 2005). Hence, it is improbable that the document can be authenticated at trial.

17 **PLAINTIFF'S EXHIBIT NO. 5**

18 *Teacher Education Book List 1993–1994*

19 **A. OBJECTION: Hearsay -- FED. R. EVID. 801(c), 802 and 805.**

20 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

21 Defendants object to this offered exhibit on the ground of hearsay. They also object on
22 the ground of relevance and waste-of-time because a teacher education book list that is over 10
23 years old lacks probative value in an injunctive relief action tried in 2005.

24 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

25 Defendants also object on the ground of Plaintiff's inability to offer proper authentication
26 at trial. In discovery, this document was identified as Exhibit C to the Deposition of Eugenie
27 Scott, a witness who is not included on either of the final witness lists (see Attachments A and B
28 to the Order of April 20, 2005).

1 **PLAINTIFF'S EXHIBIT NO. 6:**

2 *Notes of Crystal Tilton Olson, Ed.D.*

3 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

4 The notes of an expert whose testimony cannot be offered by the Plaintiff (*see* Pre-Trial
5 Order filed April 20, 2005, page 11, lines 2-3) and whose name does not appear on either of the
6 two final witness lists (see attachments A and B to the Order of April 20, 2005) is hearsay. There
7 are multiple layers of hearsay since the document as presented here is hearsay and the notes
8 purportedly recording what someone else said constitutes an underlying layer of hearsay.

9 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

10 Since Dr. Olson is not on any witness list for the trial, her notes have no probative value.

11 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

12 This exhibit cannot be authenticated in the absence of its author.

13 **PLAINTIFF'S EXHIBIT NO. 7**

14 *The John Morse Waldorf Methods School Draft Curriculum*

15 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

16 This exhibit is an outdated draft of a curriculum for John Morse. It is thus irrelevant and
17 lacks probative value in this current injunctive relief matter.

18 **PLAINTIFF'S EXHIBIT NO. 8**

19 *Yuba River Charter School Mission Statement and Curriculum*

20 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b)).**

21 This exhibit is an outdated curriculum for Yuba River Charter School. It is thus irrelevant
22 and lacks probative value in this current injunctive relief matter.

23 **PLAINTIFF'S EXHIBIT NO. 9**

24 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
25 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
26 arranged exhibits that states that this exhibit has been "withdrawn."

27 ///

28 ///

1 **PLAINTIFF'S EXHIBIT NO. 10**

2 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
3 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
4 arranged exhibits that states that this exhibit has been "withdrawn."

5 **PLAINTIFF'S EXHIBIT NO. 11**

6 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
7 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
8 arranged exhibits that states that this exhibit has been "withdrawn."

9 **PLAINTIFF'S EXHIBIT NO. 12**

10 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
11 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
12 arranged exhibits that states that this exhibit has been "withdrawn."

13 **PLAINTIFF'S EXHIBIT NO. 13**

14 *"Waldorf Education in America: A Promise and Its Problems," Ray McDermott*

- 15 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
16 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**
17 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**
18 **D. OBJECTION: Lack of foundation as witness with personal knowledge, lay opinion,**
19 **or expert (FED. R. EVID. 602, 701, 702-705, 104(b) and 1008).**

20 The author of this article is not listed as an expert for any party in the final pretrial order
21 and is not listed as a percipient witness. Therefore, his hearsay opinions are not admissible and
22 no foundation can be laid to show there is any basis for his personal knowledge or expertise.

23 **PLAINTIFF'S EXHIBIT NO. 14**

24 *"Racism and Waldorf Education," Ray McDermott*

- 25 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
26 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**
27 **C. OBJECTION: Character (FED. R. EVID. 404(a)).**

28 By even raising any question about whether the founder of Waldorf education, Rudolf

1 Steiner, was a racist, or that anthroposophists are racist in general, PLANS is effectively asking
2 this Court to make an inadmissible character inference. The argument would go like this: Steiner
3 and his anthroposophist followers are racist; therefore they are “bad”; and therefore all of
4 Waldorf education is “bad”; and therefore the schools in question are engaging in “bad”
5 (unconstitutional) conduct under the religion clauses of the federal and state constitutions. Thus,
6 this proffered evidence is beyond irrelevant – it is prejudicial character evidence of a kind that
7 Evidence Rule 404(a) was designed to prohibit.

8 **D. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 **E. OBJECTION: Lack of foundation as witness with personal knowledge, lay opinion,
10 or Expert (FED. R. EVID. 602, 701, 702-705, 104(b) and 1008).**

11 The author of this article is not listed as an expert for any party in the final pretrial order
12 and is not listed as a percipient witness. Therefore, his hearsay opinions are not admissible and
13 no foundation can be laid to show there is any basis for his personal knowledge or expertise.

14 **PLAINTIFF’S EXHIBIT NO. 15**

15 *“Anthroposophy and Waldorf Education”*

16 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

17 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

18 This document contains handwritten markings and lacks any reference to author or source
19 of the publication. Therefore, it contains inadmissible evidence and lacks authentication.

20 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

21 **PLAINTIFF’S EXHIBIT NO. 16**

22 *Letter to “Twin Ridges Alternative School Colleagues”
23 from Terry Pequette, October 13, 1995*

24 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

25 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

26 Additionally, the document contains handwritten markings by an unknown person.

27 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

1 PLAINTIFF’S EXHIBIT NO. 17

2 *“Twin Ridges Alternative Charter School, Parent Handbook, ‘95–‘96”*

3 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

4 B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

5 Additionally, the document contains handwritten markings by an unknown person.

6 C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

7 PLAINTIFF’S EXHIBIT NO. 18

8 *“Waldorf Parenting Handbook,” Lois Cusick*

9 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

10 B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

11 Additionally, the document contains handwritten markings by an unknown person.

12 C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

13 PLAINTIFF’S EXHIBIT NO. 19

14 *Twin Ridges, “Newsletter,” September 21, 1995*

15 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

16 B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

17 Additionally, the document contains handwritten markings by an unknown person.

18 C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

19 PLAINTIFF’S EXHIBIT NO. 20

20 *“Martinmas”*

21 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

22 B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

23 C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

24 PLAINTIFF’S EXHIBIT NO. 21

25 *Festivals in the Waldorf School with Activities, Songs, Verses for Children*

26 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

27 B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

28 In addition, this document contains handwritten markings by an unknown person and the

1 source of the document is not clear.

2 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

3 **PLAINTIFF'S EXHIBIT NO. 22**

4 *"First Grade Readiness and Related Issues," Joan Almon*

5 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

6 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

7 In addition, this document contains handwritten markings by an unknown person.

8 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 **PLAINTIFF'S EXHIBIT NO. 23**

10 *Anthroposophical Press, Complete Catalog*

11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

14 **PLAINTIFF'S EXHIBIT NO. 24**

15 *"Man and Animal," Roy Wilkinson*

16 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

17 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

18 In addition, this document contains handwritten markings from an unknown person.

19 **C. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

20 **D. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

21 **E. OBJECTION: Doctrine of completeness (FED. R. EVID. 106).**

22
23 The exhibit produced only contained a cover page and two pages from what appears to be
24 a larger document.

1 PLAINTIFF’S EXHIBIT NO. 25

2 “What is Taught in Waldorf Schools?”, William J. Bennette

3 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

4 B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

5 PLANS has to make a foundational showing that anything stated in this article has
6 anything to do with what is taught in the public schools in this case. Obviously, PLANS wishes
7 to have this Court make inferences from this article about what goes on in the schools of TRES
8 and SCUSD without providing admissible evidence. But Rules 104(b) and 1008 require PLANS
9 to make that preliminary showing – not just assume it.

10 C. OBJECTION: Authentication (FED. R. EVID. 901(a)).

11 D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
12 (702-705).

13 E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).

14 PLAINTIFF’S EXHIBIT NO. 26

15 “Charter for Indoctrination,” Rob Boston

16 A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).

17 B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

18 C. OBJECTION: Authentication (FED. R. EVID. 901(a)).

19 D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
20 (702-705).

21 E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).

22 PLAINTIFF’S EXHIBIT NO. 27

23 “The Interpretation of Fairy Tales,” Wilkinson

24 A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

25 PLANS can make no foundational showing that this document is relevant to the Phase I
26 question of whether anthroposophy, as distinguished from any individual’s personal beliefs or
27 conclusions, has a creed or is a religion. See discussion in Section II-A above. At Phase II,
28 PLANS also cannot make the foundational showing required under Rules 104(b) and 1008 that
the interpretations of the little red riding hood story stated in this document are communicated to

1 children at any of the public schools involved in this lawsuit.

2 **OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

3 **OBJECTION: Authentication (FED. R. EVID. 901(a)).**

4 Additionally, the document contains handwritten markings from an unknown source.

5 **OBJECTION: Doctrine of completeness (FED. R. EVID. 106).**

6 Only one page was produced as the exhibit, page 18-19 from what appears to be a larger
7 text.

8 **PLAINTIFF'S EXHIBIT NO. 28**

9 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
10 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
11 arranged exhibits that states that this exhibit has been "withdrawn."

12 **PLAINTIFF'S EXHIBIT NO. 29**

13 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
14 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
15 arranged exhibits that states that this exhibit has been "withdrawn."

16 **PLAINTIFF'S EXHIBIT NO. 30**

17 *"Rudolf Steiner, Esoteric Christianity, and the New Age Movement," Roger B. Olson*

18 **OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

19 **OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

20 **OBJECTION: Authentication (FED. R. EVID. 901(a)).**

21 **OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
22 (702-705).**

23 **OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

24 **PLAINTIFF'S EXHIBIT NO. 31**

25 *"Waldorf Education and New Age Religious Consciousness"*

26 **OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802, 805).**

27 **OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

1 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

2 This document contains handwritten markings from an unknown person. Additionally,
3 the excerpts appear to be from two different publications.

4 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
(702-705).**

5 **E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

6 **PLAINTIFF'S EXHIBIT NO. 32**

7 *"Lecture II"*

8 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10
11 This document contains handwritten markings from an unknown person and the source of
12 the document is not clear. Further, the document seems to be an excerpt from a larger document.

13 **C. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

14 **PLAINTIFF'S EXHIBIT NO. 33**

15 *Class notes of Kathleen Sutphen*

16 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

17 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

18 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

19 **PLAINTIFF'S EXHIBIT NO. 34**

20 *Letter from Robert McDermott of Rudolf Steiner College to Friends, November 25, 1996*

21 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

22 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

23 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

24 **PLAINTIFF'S EXHIBIT NO. 35**

25 *Notes re RSC Spring, 1997, Training Sessions*

26 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802, 805).**

27 This document includes hearsay within hearsay.

28 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

1 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

2 This document lacks a foundational showing of relevance to any material matter of
3 consequence in this case.

4 **D. OBJECTION: Inadmissible lay opinion, or expert opinion and/or foundation (FED.
R. EVID. 602, 701, 702-705, 104(b) and 1008).**

5 **PLAINTIFF'S EXHIBIT NO. 36**

6 *"The Esoteric Basis of the Threefold Social Order and
7 the Mission of Waldorf Education," Gary Lamb*

8 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

10 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

11 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
(702-705).**

12 **E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

13 **PLAINTIFF'S EXHIBIT NO. 37**

14 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
15 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
16 arranged exhibits that states that this exhibit has been "withdrawn."
17

18 **PLAINTIFF'S EXHIBIT NO. 38**

19 *"Waldorf Education...An Introduction" by Henry Bames*

20 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

21 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

22 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

23 **D. OBJECTION: Doctrine of completeness (FED. R. EVID. 106).**

24 Only one page of this document was produced as Exhibit 38 and it is obviously longer
25 than a one-page article.

26 **E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

1 **PLAINTIFF'S EXHIBIT NO. 39**

2 *Rudolf Steiner College Program Offerings*

3 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

4 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

5 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

6 **PLAINTIFF'S EXHIBIT NO. 40**

7 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
8 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
9 arranged exhibits that states that this exhibit has been "withdrawn."

10 **PLAINTIFF'S EXHIBIT NO. 41**

11 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
12 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
13 arranged exhibits that states that this exhibit has been "withdrawn."

14 **PLAINTIFF'S EXHIBIT NO. 42**

15 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
16 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
17 arranged exhibits that states that this exhibit has been "withdrawn."

18 **PLAINTIFF'S EXHIBIT NO. 43**

19 *Oak Ridge School Work [Allegedly] Reflecting Anthroposophy*

20 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

21 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

22 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

23 First of all, these exhibits, allegedly of children's work at Oak Ridge Elementary, are not
24 relevant because they are too old to have any bearing on what is done in any SCUSD school
25 currently. SCUSD moved its Waldorf-inspired methods (magnet) program from Oak Ridge
26 Elementary to newly-opened John Morse in the fall of 1997. See undisputed fact "e" in the
27 Court's final pretrial conference order. It is now eight years later and possibly more than that
28 when these documents were made. The program is now at a different school under different

1 administrators. The exhibit is inadmissible unless PLANS can produce a foundational showing of
2 any current relevance of these documents.

3 Second, these pictures do not speak conclusively for themselves. In fact, they do not
4 provide much in the way of information about the all-important *context* in which each of these
5 items was allegedly produced in the classroom. After all, teaching cultural studies and the history
6 of ancient civilizations are legitimate subjects for public school education. Numbering systems
7 and geography are also legitimate topics. And even more importantly, it is not the subjective,
8 esoteric impressions of PLANS members who try to read hidden meanings into the children's
9 work that matters. Instead, it is the perspective of the objective school child in the context of the
10 lesson that was actually taught that matters⁴ in determining whether the alleged "religion" of
11 anthroposophy was being unconstitutionally inculcated.

12 If this exhibit is offered at Phase I of the trial, PLANS also must produce foundational
13 evidence showing that it is relevant to determining whether anthroposophy has a religious "creed"
14 or whether it constitutes a "religion."

15 **PLAINTIFF'S EXHIBIT NO. 44**

16 *Twin Ridges Alternative Charter School Plan*

17 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

18 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

19 This exhibit is an outdated charter school plan from many years ago. It is thus irrelevant
20 and lacks probative value in the current injunctive relief matter.

21 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

22 **PLAINTIFF'S EXHIBIT NO. 45**

23 *Twin Ridges Policy and Procedures*

24 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

25 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

26 Since the document is ten years old, it lacks probative value in the current injunctive relief

27 _____
28 ⁴ See *Brown v. Woodland Joint Unified School Dist.*, 27 F.3d 1373, 1379 (9th Cir. 1994) (in
education cases, the court properly focuses on the perspective of an objective, not subjective, schoolchild).
803175.1

1 matter.

2 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

3 Further, the document contains handwritten markings from an unknown person.

4 **D. OBJECTION: Privacy (see discussion in Section II-J above).**

5 Further, the exhibit contains home addresses and telephone numbers of employees, which
6 is confidential information.

7 **PLAINTIFF'S EXHIBIT NO. 46**

8 *Twin Ridges "Faculty Vision"*

9 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

10 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

11 The document appears to be old and outdated, thus lacking probative value in the current
12 injunctive relief matter.

13 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

14 This exhibit contains handwritten markings from an unknown person.

15 **PLAINTIFF'S EXHIBIT NO. 47**

16 *"Dear Kindergarten Parents," August 30, 1995*

17 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

18 **B. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

19 The document is ten (10) years old, thus lacking probative value in the current injunctive
20 relief matter.

21 **PLAINTIFF'S EXHIBIT NO. 48**

22 *"Bibliography." handout to Twin Ridges' parents by 6th Grade teacher, September, 1995*

23 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

24 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

25 This exhibit contains handwritten markings from an unknown person.

26 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

27 Additionally, the document is 10 years old, thus lacking probative value in the current
28 injunctive relief matter.

1 **PLAINTIFF'S EXHIBIT NO. 49**

2 *"Recommended Reading," handout to Twin Ridges parents, Fall, 1995*

3 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

4 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

5 The document contains handwritten markings from an unknown person.

6 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

7 Further, the document is ten years old and thus lacks probative value in the current
8 injunctive relief matter.

9 **PLAINTIFF'S EXHIBIT NO. 50**

10 *"Some Guidelines for First Grade Readiness," Nancy Foster*

11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

14 The contents of this exhibit is not relevant to the legal tests for any of the constitutional
15 provisions at issue in this case.

16 **PLAINTIFF'S EXHIBIT NO. 51**

17 *"Confessions of a Waldorf Parent," Margaret Gorman*

18 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

19 This exhibit has multiple layers of hearsay, each of which is inadmissible unless Plaintiff
20 can show that some exception applies. (*See* FED. R. EVID. 805.) The handwritten note is hearsay;
21 the contents of the article are also hearsay.

22 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

23 The author of the handwritten note is not identified. The author of the article is not on any
24 witness list for this trial and is therefore unable to authenticate it.

25 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

26 **D. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

27 The handwritten allegation is irrelevant to current practices at the school ten years later.
28 And the article author's impressions and conclusions are also irrelevant to any issue pertaining to

1 the particular schools involved in this lawsuit in 2005.

2 **PLAINTIFF'S EXHIBIT NO. 52**

3 *"Speaking with the Young Child (Through the Kindergarten Years)," Stephen Spitalny*

4 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

5 This exhibit has multiple layers of hearsay, each of which is inadmissible unless Plaintiff
6 can show that some exception applies. (*See* FED. R. EVID. 805.) The handwritten note is hearsay;
7 the contents of the article are also hearsay. The attributions by the author to statements by other
8 people within the article constitute yet another level of hearsay.

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10 The author of the handwritten note is not identified. The author of the article is not on any
11 witness list for this trial and is therefore unable to authenticate it.

12 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

13 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert**
14 **(702-705).**

15 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

16 This article appears to be offered to show the alleged permeation of Waldorf education by
17 anthroposophy. PLANS will not be able to show any relevance between this article apparently
18 written in 1993, and the public schools involved in this lawsuit. And quoting Rudolf Steiner does
19 not supply the missing facts upon which relevance of the statements in the article, which was
20 conditioned. *See* discussion in Section II-A above (and all subparts thereof) regarding Federal
21 Rules of Evidence 104(b) and 1008.

22 **PLAINTIFF'S EXHIBIT NO. 53**

23 *"Interview Questions for Charter School Teachers"*

24 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

25 Here, too, there are multiple layers of hearsay—the handwritten portions and the typed
26 text.

27 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

1 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

2 Taking the “Spring 1995” date at face value, there is no foundational showing of a fact
3 upon which the relevance of the exhibit is conditioned – the underlying “fact,” if any such fact
4 exists, that these interview questions are being used today at any of the schools involved in this
5 lawsuit.

6 **PLAINTIFF’S EXHIBIT NO. 54**

7 *To: Fellow Lavender Kindergarten Parents, From: Lisa Schenck*

8 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

11 The document is approximately ten years old and thus lacks probative value in the current
12 injunctive relief matter.

13 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert**
14 **(702-705).**

15 **PLAINTIFF’S EXHIBIT NO. 55**

16 *Notes re Carol Nimick*

17 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

18 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

19 Additionally, the document contains handwritten markings from an unknown person.

20 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

21 PLANS can make no foundational showing of a fact upon which the relevance of the
22 exhibit is conditioned – the underlying “fact,” if any such fact exists, that these interview topics
23 are being used today at any of the schools involved in this lawsuit. All of the other documents
24 regarding Carol Nimick are also irrelevant to the constitutional issues in this case. Further, the
25 document is approximately ten years old and thus lacks probative value in the current injunctive
26 relief matter.

1 **PLAINTIFF'S EXHIBIT NO. 56**

2 *Lee Pope – Biography*

3 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

4 The document appears to be quite old, thus lacking probative value in the current
5 injunctive relief matter.

6 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

7 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

8 Additionally, the document contains handwritten markings from an unknown person.

9 **PLAINTIFF'S EXHIBIT NO. 57**

10 *“Dear Parent Council Members and Fifth Grade Families,” 1/17/96*

11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 There is no witness named Snell on the witness list to identify this exhibit.

14 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

15 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

16 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

17
18 PLANS cannot make any foundational showing of any logical linkage between this old
19 document and anything of current relevance at any of the public schools involved in this lawsuit.
20 As a result, this approximately nine year old document lacks probative value in the current
21 injunctive relief matter.

22 **PLAINTIFF'S EXHIBIT NO. 58**

23 *Newsletter, October 19, 1995*

24 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

25 There are multiple levels of hearsay – the newsletter and the underlying information about
26 a person named Deana Ross.

27 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

1 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

2 The document is ten years old and thus lacks probative value in the current injunctive
3 relief matter.

4 **PLAINTIFF'S EXHIBIT NO. 59**

5 *Gateways Educational Service Handout*

6 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

7 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

8 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 **PLAINTIFF'S EXHIBIT NO. 60**

10 *Gateways Educational Services Report on Twin Ridges student Doe 1*

11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

14 This document is ten years old and thus lacks probative value in this injunctive relief
15 action.

16 **D. OBJECTION: Privacy (see discussion in section II-J above).**

17 In addition to the above objections, the document is also objectionable because it also
18 contains student information which is confidential pursuant to California Education Code sections
19 49073 et seq. and the Family Educational Rights Privacy Act (20 U.S.C. § 1232g).

20 **PLAINTIFF'S EXHIBIT NO. 61**

21 *Gateways Educational Services Report on Twin Ridges student Doe 2*

22 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

23 There are multiple layers of hearsay – the handwritten notes, and the printed document on
24 which the notes are written.

25 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

26 This document contains handwritten markings from an unknown source.

27 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

28 Additionally, the document is ten years old, and therefore lacks any foundational showing

1 relevance to this injunctive relief action.

2 **D. OBJECTION: Privacy (see discussion in section II-J above).**

3 The document also contains student information which is confidential pursuant to
4 California Education Code sections 49073 et seq. and the Family Educational Rights Privacy Act
5 (20 U.S.C. § 1232g).

6 **PLAINTIFF'S EXHIBIT NO. 62**

7 *What is Michaelmas?*

8 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10 Additionally, the document contains handwritten markings from an unknown person.

11 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

12 PLANS will not be able to show the foundational fact that Michaelmas is taught or
13 celebrated in the public schools involved in this case. Further, the document is ten years old, and
14 thus lacks probative value in the current injunctive relief matter.

15 **PLAINTIFF'S EXHIBIT NO. 63**

16 *Newsletter, September 21, 1995*

17 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

18 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

19 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

20 **PLAINTIFF'S EXHIBIT NO. 64**

21 *Letter to Parents from Faculty, September 21, 1995*

22 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

23 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

24 The document contains handwritten markings from an unknown person.

25 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

26 Further, the document is ten years old, and thus lacks probative value in the current
27 injunctive relief matter.

1 **PLAINTIFF'S EXHIBIT NO. 65**

2 *Newsletter, November 3, 1995*

- 3 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
4 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**
5 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**
6 **D. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

7 The document is ten years old and thus lacks probative value in the current injunctive
8 relief matter.

9 **PLAINTIFF'S EXHIBIT NO. 66**

10 *Newsletter, November 9, 1995*

- 11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 The document contains handwritten markings from an unknown person.

- 14 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

15 Further, the document is ten years old, and thus lacks probative value in the current
16 injunctive relief matter.

17 **PLAINTIFF'S EXHIBIT NO. 67**

18 *Newsletter, November 16, 1995*

- 19 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
20 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

21 The document contains handwritten markings from an unknown person.

- 22 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

23 Further, the document is ten years old, and thus lacks probative value in the current
24 injunctive relief matter.

25 **PLAINTIFF'S EXHIBIT NO. 68**

26 *Newsletter, November 30, 1995*

- 27 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**
28 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

1 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

2 The document is ten years old and thus lacks probative value in the current injunctive
3 relief matter.

4 **PLAINTIFF'S EXHIBIT NO. 69**

5 *Newsletter, March 7, 1996*

6 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

7 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

8 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

9 The document is ten years old and thus lacks probative value in the current injunctive
10 relief matter.

11 **PLAINTIFF'S EXHIBIT NO. 70**

12 *Student Work, Ryan McKay's Reader*

13 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

14 This exhibit has multiple levels of hearsay – the hand written note and opinion is one level
15 and the rest of the document is another level.

16 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

17 This document contains handwritten markings from an unknown source.

18 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

19 Additionally, the document is ten years old.

20 **D. OBJECTION: Privacy (see discussion in section II-J above).**

21 The document also contains student information which is confidential pursuant to
22 California Education Code sections 49073 et seq. and the Family Educational Rights Privacy Act
23 (20 U.S.C. § 1232g).

24 **PLAINTIFF'S EXHIBIT NO. 71**

25 *"Anthroposophical Society, Fostering the Life of the Soul"*

26 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

27 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

28 Additionally, the document contains handwritten markings from an unknown person. It is

1 impossible to tell the source of the document as well.

2 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

3 If offered as evidence in Phase II of the trial, PLANS will not be able to provide a
4 foundational showing that this exhibit is relevant to any of the constitutional issues to be assessed
5 for each of the public schools involved in this lawsuit.

6 **PLAINTIFF'S EXHIBIT NO. 72**

7 *"Anthroposophy and the Waldorf Schools," p. 117*

8 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10 Additionally, the document contains handwritten markings from an unknown person.

11 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

12 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

13 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

14
15 If offered as evidence in Phase II of the trial, PLANS will not be able to provide a
16 foundational showing that this exhibit is relevant to any of the constitutional issues to be assessed
17 for each of the public schools involved in this lawsuit.

18 **F. OBJECTION: Doctrine of completeness (FED. R. EVID. 106).**

19 This exhibit appears to be a one-page excerpt from a larger document and is thus
20 incomplete.

21 **PLAINTIFF'S EXHIBIT NO. 73**

22 *Anthroposophical Education, p. 283*

23 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

24 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

25 This document contains handwritten markings by an unknown person and the source of
26 the document is not clear.

27 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

1 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

2 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

3 **PLAINTIFF'S EXHIBIT NO. 74**

4 *What is Eurythmy, Rene M. Querido*

5 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

6 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

7 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

8 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

9 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

10 **PLAINTIFF'S EXHIBIT NO. 75**

11 *Lecture Notes from Rudolf Steiner College*

12 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

13 This exhibit has multiple layers of hearsay – the notes themselves, and what was allegedly
14 spoken by someone else, which the note-taker wrote down. The attributions to what Steiner
15 allegedly said are also hearsay.

16 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

17 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

18 **PLAINTIFF'S EXHIBIT NO. 76**

19 *SFWS, Bloom 1991, p. 2*

20 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

21 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

22 This document contains handwritten markings.

23 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

24 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert (702-705).**

25 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

26 There is nothing in the text of the exhibit and PLANS cannot present any extrinsic
27
28

1 foundational showing that would indicate that this document is probative on any issue of
2 consequence pertaining to the public schools involved in this case. In addition, this document is
3 old and, on this basis alone, lacks probative value in this current injunctive relief action.

4 **F. OBJECTION: Doctrine of completeness (FED. R. EVID. 106).**

5 This document is incomplete.

6 **PLAINTIFF'S EXHIBIT NO. 77**

7 *"A Christian Mystery"*

8 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

9 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

10 This document contains handwritten markings from an unknown person. Further, no
11 author or source is listed on the document.

12 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

13 PLANS can make no foundational showing that this document is relevant to the Phase I
14 question of whether anthroposophy, as distinguished from any individual's personal beliefs or
15 conclusions, has a creed or is a religion. See discussion in Section II-A above. At Phase II,
16 PLANS also cannot make the foundational showing required under Rule 104(b) that the
17 interpretations of the little red riding hood story stated in this document are communicated to
18 children at any of the public schools involved in this lawsuit.

19 **PLAINTIFF'S EXHIBIT NO. 78**

20 *"Morning Verse for Lower Grades"*

21 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

22 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

23 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

24 The document is old and pertains to a Wisconsin school. It thus lacks probative value in
25 the current injunctive relief matter.

1 **PLAINTIFF’S EXHIBIT NO. 79**

2 *“Nature-Based School”*

3 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

4 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

5 This document contains handwritten markings by an unknown person and the source of
6 the document is not clear.

7 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

8 This exhibit pertains to a Novato school, which is not a party to this lawsuit.

9 **PLAINTIFF’S EXHIBIT NO. 80**

10 *“Christmas Season in a Public School,” James W. Petersen*

11 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 This document contains handwritten markings by an unknown person and the source of
14 the document is not clear.

15 **C. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

16 **D. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

17 The author presupposes what the children “knew” that their school-work was “honoring
18 the presence of the invisible worlds” or what they “felt” when he says “we felt.”

19 **E. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
20 (702-705).**

21 **F. OBJECTION: Character (FED. R. EVID. 404(a)).**

22 By offering this exhibit, PLANS obviously intends to show that the teacher in question
23 had religious trickery in mind rather than a desire to teach multicultural information. The
24 inference PLANS wishes the court to reach with this evidence is that because this teacher was
25 “bad” in hoping to and attempting to deliver religious indoctrination by deception, then the
26 actions of the public schools involved in this case that use some Waldorf methods must also be
27 “bad.” That is precisely the type of inference that is prohibited by the rule excluding character
28 evidence.

1 **PLAINTIFF'S EXHIBIT NO. 81**

2 *“Waldorf Education Develops the Fundamental Capacities*
3 *of the Child Through the Balance of Its Subject”*

4 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

5 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

6 This document contains handwritten markings by an unknown person and the source of
7 the document is not clear.

8 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

9 **D. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

10 **PLAINTIFF'S EXHIBIT NO. 82**

11 *“The Plant World”*

12 **A. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

13 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

14 This document contains handwritten markings by an unknown person and the source of
15 the document is not clear.

16 **C. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

17 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert
18 (702-705).**

19 **E. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

20 **PLAINTIFF'S EXHIBIT NO. 83**

21 *“The Wave Theory of Light”*

22 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

23 PLANS cannot establish the necessary foundation that the content of this exhibit is taught
24 in the public schools involved in this lawsuit. PLANS apparently wants this court to assume that
25 “bad” science is taught, which it is not. But even if “bad” science were taught, that would not be
26 relevant to whether the schools are violating the constitutional provisions pertaining to religion.
27 Further, the document pertains to Sacramento Waldorf School, which is a private Waldorf school.
28 That school is not related to either District involved in this case.

1 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

2 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

3 This document contains handwritten markings by an unknown person and the source of
4 the document is not clear.

5 **PLAINTIFF'S EXHIBIT NO. 84**

6 *Steiner, ONS, p. 112*

7 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

8 PLANS cannot establish the necessary foundation that the content of this exhibit is taught
9 in the public schools involved in this lawsuit. Moreover, even if so-called "bad" science were
10 taught, that would not be relevant to whether the schools are violating the Establishment Clause
11 regarding religion. In addition, foundational showing would have to be made to show that
12 Steiner's personal conclusions in the area of science are components of any prescribed set of
13 beliefs or dogma for anthroposophy.

14 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

15 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

16 This document contains handwritten markings by an unknown person.

17 **PLAINTIFF'S EXHIBIT NO. 85**

18 *The Temple Legend, p. 220*

19 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

20 PLANS cannot establish the necessary foundation that the content of this exhibit is taught
21 in the public schools involved in this lawsuit. Moreover, even if "bad" science were taught, that
22 would not be relevant to whether the schools are violating the Establishment Clause regarding
23 religion. In addition, foundational showing would have to be made to show that Steiner's
24 personal conclusions in the area of science are components of any prescribed set of beliefs or
25 dogma for anthroposophy.

26 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

27 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

28 This document contains handwritten markings by an unknown person and the source of

1 the document is not clear.

2 **D. OBJECTION: Character (FED. R. EVID. 404(a)).**

3 By quoting Steiner, PLANS is attempting to show that Steiner was “bad” because he was
4 a racist. By doing so, PLANS wants to encourage this Court to believe that all Waldorf methods
5 used in the public schools in question today (2005) are inherently “bad” because the founder of
6 private Waldorf education, Steiner, was bad. This is an impermissible inference under the rule.

7 **E. OBJECTION: Doctrine of completeness (Fed. R. Evid. 106).**

8 Further, the exhibit appears to be an incomplete excerpt from a larger document.

9 **PLAINTIFF’S EXHIBIT NO. 86**

10 *Lecture Three, p. 41*

11 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

12 Racial stereotyping is not the allegation of wrongdoing advanced by PLANS in this case.
13 Any evidence of such thinking on the part of the founder of Waldorf education, who was writing
14 in an era long ago, is therefore completely irrelevant.

15 It is also irrelevant to the threshold issue of whether anthroposophy is a religion. *See*
16 discussion of conditional relevance under Rules 104(b) and 1008 -- in reference to the writings of
17 Rudolf Steiner and anthroposophy in Section II-A-4 above.

18 **B. OBJECTION: Character (FED. R. EVID. 404(a)).**

19 If offered to show that Steiner, the founder of Waldorf education was a “bad” person
20 because he thought in racially-stereotypical terms, the evidence is inadmissible as character
21 evidence. No fallacious inference of “badness” on the part of anthroposophists today in terms of
22 beliefs, or public school officials of today in terms of unconstitutional religious practices can be
23 rationally made simply because Steiner held those stated views so long ago in different
24 circumstances.

25 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

26 This document contains handwritten markings by an unknown person and the source and
27 author of the document are unclear.

1 **PLAINTIFF'S EXHIBIT NO. 87**

2 *Oak Ridge Elementary Pictures*

3 **OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

4 First of all, these exhibits, allegedly of children's work at Oak Ridge Elementary, are not
5 relevant because they are too old to have any bearing on what is done in any SCUSD school
6 currently. SCUSD moved its Waldorf-inspired methods (magnet) program from Oak Ridge
7 Elementary to newly-opened John Morse in the fall of 1997. See undisputed fact "e" in the
8 Court's final pretrial conference order. It is now eight years later and possibly more than eight
9 years ago when these documents were made. The program is now at a different school location
10 under different administrators. The exhibit is inadmissible unless PLANS can produce a
11 foundational showing of any current relevance of these documents in this action for injunctive
12 relief only.

13 Second, these pictures do not speak conclusively for themselves. In fact, they do not
14 provide much in the way of information about the all-important *context* in which each of these
15 items was allegedly produced in the classroom. After all, teaching cultural studies and the history
16 of ancient civilizations are legitimate subjects for public school education. Numbering systems
17 and geography are also legitimate topics. And even more importantly, it is not the subjective,
18 esoteric impressions of PLANS members who try to read hidden meanings into the children's
19 work that matters. Instead, it is the perspective of the objective school child in the context of the
20 lesson that was actually taught that matters⁵ in determining whether the alleged "religion" of
21 anthroposophy was being unconstitutionally inculcated.

22 If this exhibit is offered at Phase I of the trial, PLANS also must produce foundational
23 evidence showing that the exhibit is relevant to determining whether anthroposophy has a
24 religious "creed" or whether it constitutes a "religion."

25 **OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

26 **OBJECTION: Authentication (FED. R. EVID. 901(a)).**

27 _____
28 ⁵ See *Brown v. Woodland Joint Unified School Dist.*, 27 F.3d 1373, 1379 (9th Cir. 1994) (in
education cases, the court properly focuses on the perspective of an objective, not subjective, schoolchild).

1 **PLAINTIFF'S EXHIBIT NO. 88**

2 *Pictures from other Waldorf Schools*

3 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

4 Exhibits labeled as pictures from other Waldorf schools are facially irrelevant. They do
5 not pertain to the schools in question. The schools in question are Waldorf-inspired schools
6 under the administration of the two respective school districts. The selection of which Waldorf
7 methods to use or not use and the decision whether to modify some Waldorf methods is
8 inherently a local school district decision. No evidence about what other "Waldorf" schools
9 allegedly do now or have done in the past can support any logical inference that the Defendant
10 Districts do the same things.

11 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 **PLAINTIFF'S EXHIBIT NO. 89**

14 *"The Waldorf Teacher's Survival Guide," Eugene Schwartz*

15 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

16 PLANS will be unable to make any foundational showing at Trial Phase I that this
17 document accurately reflects the nature of anthroposophy or that it is relevant to the content of
18 any alleged anthroposophical "creed" or set of beliefs that anthroposophists are expected to adopt
19 as dogma.

20 At Phase II, PLANS will not be able to supply any foundational showing that this exhibit
21 has any relevance to the current operations of any of the schools involved in this case.

22 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

23 It should be noted that PLANS withdrew the author of this document as a witness. He,
24 therefore, does not appear on Plaintiff's final witness list.

25 **C. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

26 To the extent that this exhibit may be offered for the truth of the matter stated, Defendants
27 object that it is inadmissible hearsay.

1 **D. OBJECTION: Lay opinion (FED. R. EVID. 701); inadequate foundation as an expert**
2 **(702-705).**

3 Note: Eugene Schwartz, the author of this exhibit, is not listed as a witness on any party's
4 final witness list, as such lists appear as attachments to the Court's final pretrial order dated April
5 20, 2005. Since the final pretrial order is determinative of what "expert" witnesses and other
6 witnesses will testify (FED. R. CIV. PROC. 16(e)), PLANS cannot possibly lay any foundational
7 showing that Eugene Schwartz has any opinions that would be admissible into evidence in this
8 case.

9 **E. OBJECTION: Personal knowledge (FED. R. EVID. 602 and 104(b)).**

10 PLANS also will not be able to produce evidence showing that Mr. Schwartz has any
11 personal knowledge about what he states in the exhibit, or about Waldorf methods as they are
12 employed at the public schools involved in this case.

13 **F. OBJECTION: Doctrine of completeness (Fed. R. Evid. 106.)**

14 Further, the exhibit produced by plaintiff only goes to p. 67 of what appears to be a larger
15 document.

16 **PLAINTIFF'S EXHIBIT NO. 90**

17 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
18 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
19 arranged exhibits that states that this exhibit has been "withdrawn."

20 **PLAINTIFF'S EXHIBIT NO. 91**

21 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
22 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
23 arranged exhibits that states that this exhibit has been "withdrawn."

24 **PLAINTIFF'S EXHIBIT NO. 92**

25 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
26 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
27 arranged exhibits that states that this exhibit has been "withdrawn."

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PLAINTIFF'S EXHIBIT NO. 93

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

PLAINTIFF'S EXHIBIT NO. 94

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

PLAINTIFF'S EXHIBIT NO. 95

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

PLAINTIFF'S EXHIBIT NO. 96

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

PLAINTIFF'S EXHIBIT NO. 97

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

PLAINTIFF'S EXHIBIT NO. 98

WITHDRAWN. Despite its inclusion by number on PLANS' Proof of Personal Service on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been "withdrawn."

1 **PLAINTIFF'S EXHIBIT NO. 99**

2 *"Advent Spiral Video"*

3 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

4 This exhibit is a videotape of children engaged in an activity. However, Plaintiff can lay
5 no foundation for this video. There is no way of knowing from the videotape itself when the
6 videotape was made, who took the videotape, who is depicted in the videotape, where the
7 videotape was taken, or what the children are doing. The video also does not include any
8 indication of what the children were told about this activity before they engaged in it or what they
9 understood about the activity, and thus does not include any foundational showing of context
10 upon which any relevance would conditionally depend.

11 **B. OBJECTION: Hearsay (FED. R. EVID. 801(c) and 802).**

12 **C. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

13 **D. OBJECTION: Possible illegality.**

14 Furthermore, the videotape appears to have been taken by a hidden video camera. If so,
15 the videotape may be illegal if it was taken without the permission of the children's parents.

16 **E. OBJECTION: Plaintiff's labeling of the videotape is unsupported.**

17 PLANS refers to this exhibit as "Advent Spiral Video." Using the word "Advent" is a
18 conclusory description without foundation and should be stricken.

19 **PLAINTIFF'S EXHIBIT NO. 114**

20 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
21 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
22 arranged exhibits that states that this exhibit has been "withdrawn."

23 **PLAINTIFF'S EXHIBIT NO. 115**

24 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
25 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
26 arranged exhibits that states that this exhibit has been "withdrawn."

27 **PLAINTIFF'S EXHIBIT NO. 119**

28 **WITHDRAWN.** PLANS' set of exchanged exhibits contains a page in the numerical

1 sequence of exhibits that states that this exhibit has been “withdrawn.”

2 **PLAINTIFF’S EXHIBIT NO. 135**

3 **WITHDRAWN.** Despite its inclusion by number on PLANS’ Proof of Personal Service
4 on opposing counsel, PLANS’ set of exchanged exhibits contains a page within the numerically
5 arranged exhibits that states that this exhibit has been “withdrawn.”

6 **PLAINTIFF’S EXHIBIT NO. 160**

7 **WITHDRAWN.** Despite its inclusion by number on PLANS’ Proof of Personal Service
8 on opposing counsel, PLANS’ set of exchanged exhibits contains a page within the numerically
9 arranged exhibits that states that this exhibit has been “withdrawn.”

10 **PLAINTIFF’S EXHIBIT NO. 170**

11 **WITHDRAWN.** Despite its inclusion by number on PLANS’ Proof of Personal Service
12 on opposing counsel, PLANS’ set of exchanged exhibits contains a page within the numerically
13 arranged exhibits that states that this exhibit has been “withdrawn.”

14 **PLAINTIFF’S EXHIBIT NO. 172**

15 *“Outline of Esoteric Science,” Rudolf Steiner*

16 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

17 *See* points and authorities about relevance and conditional relevance contained above in
18 Section II-A in general and subsection II-A(4) in particular, which are incorporated herein by
19 reference in their entirety.

20 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

21 **PLAINTIFF’S EXHIBIT NO. 173**

22 *“The Spiritual Hierarchies,” Rudolf Steiner*

23 **A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).**

24 *See* points and authorities about relevance and conditional relevance contained in Section
25 II-A above in general and subsection II-A(4) in particular, which are incorporated herein by
26 reference in their entirety.

27 **B. OBJECTION: Authentication (FED. R. EVID. 901(a)).**

PLAINTIFF’S EXHIBIT NO. 184

“How to Know Higher Worlds,” Rudolf Steiner

A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

See above points and authorities about relevance and condition relevance contained in Section II-A (above) in general and subsection II-A(4) in particular, which are incorporated herein by reference in their entirety.

B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

PLAINTIFF’S EXHIBIT NO. 185

WITHDRAWN. Despite its inclusion by number on PLANS’ Proof of Personal Service on opposing counsel, PLANS’ set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been “withdrawn.”

PLAINTIFF’S EXHIBIT NO. 188

“Karmic Relationships,” Rudolf Steiner

A. OBJECTION: Relevance (FED. R. EVID. 401-402, 104(b) and 1008).

See points and authorities about relevance and condition relevance contained in Section II-A in general and subsection II-A(4) in particular, which are incorporated herein by reference in their entirety.

B. OBJECTION: Authentication (FED. R. EVID. 901(a)).

PLAINTIFF’S EXHIBIT 193

WITHDRAWN. Despite its inclusion by number on PLANS’ Proof of Personal Service on opposing counsel, PLANS’ set of exchanged exhibits contains a page within the numerically arranged exhibits that states that this exhibit has been “withdrawn.”

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1 PLAINTIFF'S EXHIBIT NO. 200

2 **WITHDRAWN.** Despite its inclusion by number on PLANS' Proof of Personal Service
3 on opposing counsel, PLANS' set of exchanged exhibits contains a page within the numerically
4 arranged exhibits that states that this exhibit has been "withdrawn."

5 Dated: September 1, 2005

6 KRONICK, MOSKOVITZ, TIEDEMANN & GIRARD
7 A Professional Corporation

8 By /s/ Susan R. Denious
9 Susan R. Denious
10 Attorneys for Defendant Sacramento City Unified
11 School District

12 Dated: September 1, 2005

GIRARD & VINSON, LLP

13 By /s/ Michelle L. Cannon
14 Michelle L. Cannon
15 Attorneys for Defendant TWIN RIDGES
16 ELEMENTARY SCHOOL DISTRICT

17 **The filer attests that concurrence in the filing of this document has been obtained from each**
18 **of the signatories.**

1 **PROOF OF SERVICE BY MAIL**

2 I, Bao Xiong, declare:

3 I am a resident of the State of California and over the age of eighteen years, and not a
4 party to the within action; my business address is 400 Capitol Mall, 27th Floor, Sacramento, CA
95814-4416. On September 1, 2005, I served the within documents:

5 **PROOF OF SERVICE BY MAIL (RE: DEFENDANTS' JOINT OBJECTIONS TO**
6 **PLAINTIFF'S EXHIBITS)**

- 7 by transmitting via facsimile from (916) 321-4555 the above listed document(s)
8 without error to the fax number(s) set forth below on this date before 5:00 p.m. A
9 copy of the transmittal/confirmation sheet is attached.
- 10 by placing the document(s) listed above in a sealed envelope with postage thereon
11 fully prepaid, in the United States mail at Sacramento, California addressed as set
12 forth below.
- 13 by causing personal delivery by Messenger of the document(s) listed above to the
14 person(s) at the address(es) set forth below.
- 15 by placing the document(s) listed above in a sealed _____ envelope
16 and affixing a pre-paid air bill, and causing the envelope to be delivered to a
17 _____ agent for delivery
- 18 by personally delivering the document(s) listed above to the person(s) at the
19 address(es) set forth below.

16 Frederick J. Dennehy
17 PRO HAC VICE
18 Wilentz Goldman and Spitzer
19 90 Woodbridge Center Drive
20 Woodbridge, NJ 07095

21 I am readily familiar with the firm's practice of collection and processing correspondence
22 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
23 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
24 motion of the party served, service is presumed invalid if postal cancellation date or postage
25 meter date is more than one day after date of deposit for mailing in affidavit.

26 I declare that I am employed in the office of a member of the bar of this court at whose
27 direction the service was made.

28 Executed on September 1, 2005, at Sacramento, California.

25 /s/ Bao Xiong

Bao Xiong