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YES! YOGA FOR ENCINITAS STUDENTS
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 STEPHEN SEDLOCK, JENNIFER SEDLOCK,
11 WILLIAM FREDERICK BENTZ, as guardian ad
litem, for minors J.S. and F.S.,
12

Petitioners & Plaintiffs,
13

v.
14

TIMOTHY BAIRD, SUPERINTENDENT, in his
official capacity; EMILY ANDRADE, TRUSTEE,
15 in her official capacity; MARLA STRICH,
TRUSTEE, in her official capacity; GREGG
16 SONKEN, TRUSTEE, in his official capacity;
CAROL SKILJAN, TRUSTEE, in her official
17 capacity; and MAUREEN MUIR, TRUSTEE, in
her official capacity, ENCINITAS UNION
18 SCHOOL DISTRICT,

Respondents & Defendants.
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21 YES! YOGA FOR ENCINITAS STUDENTS, an
unincorporated association,
22

Intervenor.
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) Case No.:
37-2013-00035910-CU-MC-CTL

) TRIAL BRIEF OF INTERVENOR
YES! YOGA FOR ENCINITAS
STUDENTS

) [IMAGED FILE]

) Date: May 20, 2013
Time: 9:00 a.m.
Judge: John S. Meyer
Dept: C-61

1 **1. INTRODUCTION / STATEMENT OF FACTS**

2 Context is everything. Plaintiffs contend yoga in any context is equivalent to
3 religious worship. Such myopic assertion ignores the ubiquity of yoga in the modern world.
4 The ancient practice has evolved into a common-place, contemporary exercise routine
5 which includes: hip-hop yoga,¹ paddle board yoga,² hangover yoga,³ yoga for men (known
6 as “broga”),⁴ hot yoga,⁵ military yoga,⁶ kickboxing yoga⁷ (known as “koga”), standup
7 paddle-boarding⁸ (SUP) yoga, aqua yoga⁹, yoga booty ballet¹⁰, rope yoga¹¹, yoga and
8 chocolate¹², yoga and capoeira¹³, rock yoga,¹⁴ prenatal yoga¹⁵, power yoga¹⁶, restorative
9 yoga,¹⁷ holy yoga,¹⁸ airplane yoga,¹⁹ airport or hotel yoga,²⁰ hoop vinyasa,²¹ belly dance

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11 ¹ Los Angeles Times, April 13, 2013, [Yoga with some twists](#), Mikaela Conley.

12 ² *Id.*

13 ³ *Id.*

14 ⁴ *Id.*

15 ⁵ *Id.*

16 ⁶ Washington Times, December 5, 2012, [Marines expanding use of meditation training](#), Patrick Hruby.

17 ⁷ Good Morning America, April 23, 2013, [9 Hottest Yoga Trends Springing Up Around the Globe](#), Lena Katz.

18 ⁸ *Id.*

19 ⁹ *Id.*

20 ¹⁰ *Id.*

21 ¹¹ *Id.*

22 ¹² *Id.*

23 ¹³ *Id.*

24 ¹⁴ *Id.*

25 ¹⁵ Women’shealth.com, [Types of Yoga](#),
26 <http://www.womenshealthmag.com/yoga/types-of-yoga>, last accessed on May 11, 2013.

27 ¹⁶ *Id.*

28 ¹⁷ *Id.*

29 ¹⁸ [Holy Yoga Foundation in Christ](#), <http://holyyoga.net/>, last accessed on May 11,
30 2013.

31 ¹⁹ New York Times, May 1, 2013, [Striking a Pose Above the Clouds](#), Stephanie
32 Rosenbloom.

33 ²⁰ New York Times, January 14, 2013, [A Moment of Zen, on the Go](#), Jane L. Levere.

34 ²¹ New York Times, February 21, 2013, [Yoga, With New Poses to Strike](#), Daniel
35 Krieger.

1 yoga²² (known as “HIPrana”), trampoline yoga,²³ inmate yoga,²⁴ anti-gravity yoga,²⁵ yoga
2 and wine,²⁶ disco yoga²⁷, scuba yoga²⁸, and acrobatic yoga²⁹ (known as “acroyoga”).

3 The pervasiveness of yoga is underscored by plaintiffs’ claim that Encinitas Union
4 School District (EUSD)’s yoga program simultaneously promotes no less than four different
5 – partially conflicting – religious philosophies. That yoga is so malleable even in plaintiffs’
6 eyes is an acknowledgment that yoga is a universal discipline. (Declaration of Dr. David
7 Chapple [“Chapple Dec.”], ¶4; Declaration of Dr. Mark Singleton [“Singleton Dec.”], ¶¶8,
8 10). In other words, yoga is not *inherently* affiliated with *any religion*. (*Id.*; Declaration of
9 Brandon Hartsell [“Hartsell Dec.”], ¶¶8, 11).

10 Accordingly, plaintiffs’ case rests on *their subjective belief* in the supernatural power
11 of yoga. EUSD students should not be deprived of their world class yoga program merely
12 because of plaintiffs’ personal bias.³⁰

14 **2. YOGA IS NOT INHERENTLY RELIGIOUS**

15 Plaintiffs claim yoga cannot be practiced without religious advancement.

16 Specifically, they contend the physical postures of yoga– whether students intend them to

17 ²² *Id.*

18 ²³ *Id.*

19 ²⁴ New York Times, January 3, 2013, [A Series of Poses for Fitness, Inside and Out](#),
Mary Pilon.

20 ²⁵ New York Times, April 26, 2011, [Gym Class: AntiGravity Yoga](#), Karen Barrow.

21 ²⁶ New York Times, December 15, 2006, [The Days of Wine and Yoga](#), Cindy Price.

22 ²⁷ Los Angeles Times, December 17, 2000, [Variety’s the Spice of Hybrid Aerobics](#),
Ira Dreyfuss.

23 ²⁸ Examiner, May 13, 2011, [La Source on Grenada introduces scuba-yoga
program](#), Debbra Brouillette.

24 ²⁹ Philadelphia Magazine, April 15, 2013, [Spotted: Amazing Acro Yogis in Nolibs](#),
Emily Leaman; see also, Los Angeles Times, December 17, 2000, [Variety’s the Spice of
Hybrid Aerobics](#), Ira Dreyfuss.

26 ³⁰ “ ‘People may take offense at all manner of religious as well as nonreligious
27 messages.’ [citation] If an Establishment Clause violation arose each time a student
28 believed that a school practice either advanced or disapproved of a religion, school
curricula would be reduced to the lowest common denominator, permitting each student to
become a ‘curriculum review committee’ unto himself or herself.” (*Brown v. Woodland Joint
Unified Sch. Dist.*, (9th Cir. Cal. 1994) 27 F.3d 1373, 1379, quoting *Lee v. Weisman*,
(1992) 112 S. Ct. 2649, 2661).

1 or not – reflect religious worship and lead to a spiritual shift toward Hinduism. (Complaint,
2 ¶¶34, 45; Declaration of Candy Gunther Brown [“Brown Dec.”], ¶¶79-82). While such
3 contention is dubious at best, it need not be debated because plaintiffs’ *subjective*
4 *perception* is irrelevant.³¹ The determinative issue is whether in the *context* of the EUSD
5 program, an *objective observer* would view yoga as advancing religion.³²

6 Moreover, plaintiffs’ argument that yoga is inherently religious is undermined by the
7 universal nature of yoga, and the diversity of faiths to which yoga practitioners ascribe.
8 (Chapple Dec., ¶5; Singleton Dec., ¶5; Hartsell Dec., ¶8). Tellingly, plaintiffs’ theory of
9 super- or preternatural power inherent within yoga postures is discredited by *Catholic*
10 *Answers Magazine*:

11 This assertion shades into superstition, ascribing magical effects to a physical
12 action based solely upon its external performance [citation]. But let’s be clear:
13 The body postures of yoga are in themselves *neutral*. Moving the body into a
certain position does not necessarily engage the person in any particular
spiritual activity.³³

14 Indeed, yoga is so universally accepted as an exercise, the White House recently
15 encouraged Americans to take up the activity and included a yoga garden during its
16 *Easter*³⁴ egg hunt.³⁵ (Hartsell Dec., ¶¶10-13). Because of its generally accepted mental
17 and physical benefits, yoga has also been used to help veterans cope with post traumatic
18 stress disorder,³⁶ and incorporated into Marine Corps reservist training at Camp

21 ³¹ “Rather than consider what effect a challenged government practice has had on a
22 particular public school student, the Supreme Court and this circuit consistently have
applied an *objective standard* for public school Establishment Clause inquiries.” *Brown* ,
infra, 27 F.3d. at 1378, emphasis added.

23 ³² [Johnson v. Poway Unified Sch. Dist.](#), (9th Cir. 2011) 658 F.3d 954, 972 [“Context
24 is critical when evaluating the government’s conduct.”]; *Brown, infra*, 27 F.3d. at 1378.

25 ³³ Catholic Answers Magazine, May 2012, [The Trouble with Yoga, A Catholic may
practice the physical postures, but with caveats](#), Michelle Arnold, emphasis added.

26 ³⁴ Easter is a “[m]ajor festival of the Christian church year, celebrating the
27 resurrection of Jesus on the third day after his crucifixion.” (Merriam-Webster Concise
Encyclopedia).

28 ³⁵ The Wall Street Journal, April 15, 2013, [The White House Gets Behind Yoga](#), Visi
R. Tilak.

³⁶ Media Planet, November 2012, [Yoga Saved My Life](#), Lilly Bechtel.

1 Pendleton.³⁷ (Hartsell Dec., ¶12). The ease with which yoga has permeated American
2 society is not a reflection of a secret Hindu agenda, as plaintiffs posit. (Brown Dec., ¶¶68-
3 76). Rather, it is a reflection of the fact that yoga is objectively and equally beneficial to
4 persons of all faiths, as well as those who possess no religious beliefs at all. (Hartsell Dec.,
5 ¶10, 13).

6 7 **3. EUSD YOGA IS NOT RELIGIOUS SIMPLY BECAUSE OF YOGA'S RELIGIOUS** 8 **ORIGINS**

9 Because yoga has roots in India and Hinduism, plaintiffs would have it forever
10 banned from schools, regardless of the context. Following plaintiffs' logic, schools would
11 have to ban: basketball because of its origins in the Y.M.C.A. (Singleton Dec. ¶10); the
12 drinking of grape juice because it is used as a substitute for wine during communion;³⁸ and
13 the celebration of Valentine's Day and Halloween because of their religious origins. To be
14 secular, however, yoga need not be completely stripped of its historic roots.³⁹ (Singleton
15 Dec. ¶¶6, 8, 11).

16 Recognizing this, the California Legislature specifically provided for the use of
17 "things having a religious significance" in public schools.⁴⁰ (Cal. Educ. Code §51511). This

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19 ³⁷ The Washington Times, December 5, 2012, [Marines expanding use of meditation training](#), Patrick Hruby.

20 ³⁸ In 1869, Thomas Bramwell Welch "invented a method of pasteurizing grape juice
21 so that fermentation was stopped, and the drink was non-alcoholic. He persuaded local
22 churches to adopt this non-alcoholic 'wine' for communion services, calling it 'Dr. Welch's
Unfermented Wine.'" (Wikipedia, available at
http://en.wikipedia.org/wiki/Thomas_Bramwell_Welch, last accessed on May 12, 2013.

23 ³⁹ "The Establishment Clause does not wholly preclude the government from
24 referencing religion...Not only would such a drastic and draconian requirement raise
25 substantial difficulties as to what might be left to talk about, but, as the district court took
great pains to point out, *it would require that we ignore much of our own history and that of*
the world in general." *Johnson, infra*, 658 F.3d at 971, footnote and internal citations
omitted, emphasis added.

26 ⁴⁰ Cal. Educ. Code §51511 reads in full: "Nothing in this code shall be construed to
27 prevent, or exclude from the public schools, references to religion or references to or the
28 use of religious literature, dance, music, theatre, and visual arts or other things having a
religious significance when such references or uses do not constitute instruction in
religious principles or aid to any religious sect, church, creed, or sectarian purpose and
when such references or uses are incidental to or illustrative of matters properly included
in the course of study."

1 statute reflects an express acknowledgment that teaching a practice which may have
2 “religious significance” does not necessarily result in *instruction in* religious principles or
3 *aid to* a religious sect. (*Id.*).

4 5 **4. EUSD’S ON THE MAT CURRICULUM DOES NOT ADVANCE RELIGION**

6 Plaintiffs have failed to articulate how yoga poses are intended to be an act of
7 worship when performed by EUSD students or teachers. The curriculum makes no
8 mention of religion, nor does it advocate for belief in or worship of a deity.⁴¹

9 Because the mere physical act of yoga is not overtly religious, plaintiffs instead rely
10 on *their subjective belief* in the religious nature of yoga. (Complaint, ¶¶34; Brown Dec.
11 ¶¶57-59). Again, the relevant test is whether an “*objective observer*” would perceive the
12 EUSD yoga program as religious worship, not plaintiffs.

13 **A. Agreement with a Religious Tenet Is Not a Violation of the** 14 **Establishment Clause**

15 Though their primary focus is the physical practice of yoga, plaintiffs also take issue
16 with the EUSD curriculum for teaching respect for others and self reflection. (Complaint,
17 ¶¶33). According to plaintiffs’ expert, these are religious concepts and goals. (Brown Dec.,
18 ¶¶34). However, the Establishment Clause does not ban conduct “whose reason or effect
19 merely happens to coincide or harmonize with the tenets of some or all religions.”⁴²
20 Teaching students to consider how their actions effect themselves and others is not
21 inherently religious – it is a legitimate expression of societal ethics.

22 **B. The EUSD Curriculum Is a Valid Reflection of Community Values**

23 The EUSD school board has “broad authority” to establish curriculum that
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26 ⁴¹ See [Altman v. Bedford Cent. Sch. Dist.](#), (2d Cir. 2001) 245 F.3d 49, 79. The Court
27 found students’ participation in an Earth Day celebration did not constitute advancement of
28 Gaia (a recognized religion of worshipping the Earth). Applying the “objective observer” test,
the Court relied on the absence of (i) references to Gaia; (ii) any suggestion that the Earth
possessed supernatural powers, that it should be worshiped, or seen as divine; and (iii)
any evidence the proceedings were religious in nature.

⁴² *Brown, infra*, 27 F.3d at 1380-1381.

1 communicates community values.⁴³ Yoga, as it has developed in the United States in the
2 past 150 years, is a distinctly American cultural phenomenon. It is rooted in American
3 culture as much (and sometimes far more) than in Indian culture. (Singleton Dec., ¶12;
4 Hartsell Dec., ¶13). EUSD's yoga curriculum reflects the EUSD's desire to provide its
5 students with a form of physical exercise that mirrors community values of physical fitness
6 and mental well being. It has been recently reported that in Encinitas, a community renown
7 for its health and fitness culture, a full forty-five percent of residents practice yoga.⁴⁴
8 Teaching yoga in schools is thus as natural and valid an expression of this community
9 value as celebrating Earth Day.⁴⁵

10
11 **5. CONCLUSION**

12 Plaintiffs' contentions are based on a subjective belief/fear that neither adheres to
13 the applicable constitutional standards nor comports with objective reality. Because an
14 objective observer would not view the EUSD yoga curriculum as advancing or inhibiting
15 religion, plaintiffs' arguments must fail.

16 Dated: May 13, 2013

COAST LAW GROUP LLP



18 By:

19 DAVID A. PECK, ESQ.
20 Attorneys for Intervenor
21 YES! YOGA FOR ENCINITAS STUDENTS

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23
24 ⁴³ *McCarthy v. Fletcher*, (1989) 207 Cal. App. 3d 130, 144 [...it is recognized that
25 the board has broad authority 'to establish and apply [its] curriculum in such a way as to
26 transmit community values, and that there is a legitimate and substantial community
27 interest in promoting respect for authority and traditional values be they social, moral, or
28 political,' " quoting *Bd. of Educ. v. Pico*, (1982) 457 U.S. 853, 864, internal citations
omitted].

⁴⁴ [Downtown Encinitas Directory](#), Downtown Encinitas Mainstreet Association, April
2013, pp. 4, 10-11).

⁴⁵ The observance of Earth Day would constitute pagan worship pursuant to
plaintiffs' reasoning. This assertion was squarely rejected in *Altman, infra*, 245 F.3d 49.