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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 VERONICA OLLIER, et al.,

12 Plaintiffs,

13 v.

14 SWEETWATER UNION HIGH
15 SCHOOL, et al.,

16 Defendants.

Case No.: 7-cv-00714-L-JLB

**REPORT AND
RECOMMENDATION**

[ECF No. 346]

17
18 **I. INTRODUCTION**

19 Before the Court is the parties' Joint Motion to Withdraw Enforcement Motion and
20 Vacate Order to Show Cause. (ECF No. 346.) The parties jointly request that the Court
21 approve the withdrawal of Plaintiffs' Motion to Enforce Permanent Injunction
22 ("Enforcement Motion") (ECF No. 225). The parties further jointly request that the Court
23 discharge the Order to Show Cause ("OSC") issued concurrently with its Order granting
24 Plaintiffs' Enforcement Motion (ECF No. 249). This Report and Recommendation is
25 submitted to the Honorable M. James Lorenz pursuant to 28 U.S.C. § 636(b)(1) and Civil
26 Local Rule 72.1 of the United States District Court for the Southern District of California.
27 For the reasons set forth below, the Court **RECOMMENDS** that the District Court
28 **GRANT** the parties' joint motion.

1 Court’s injunction and remedy its Title IX violations. (*See id.*) Plaintiffs requested that
2 the Court issue an order to show cause why Defendant should not be held in contempt for
3 its inaction. (*See id.*) Plaintiffs also requested the Court’s assistance in resolving the
4 disputed provisions in the Joint Compliance Plan. (*Id.* at 12.) On August 26, 2013, Judge
5 Lorenz ordered additional briefing on the Enforcement Motion and directed the parties to
6 Magistrate Judge William McCurine for resolution of the Joint Compliance Plan disputes.
7 (ECF No. 231.)

8 After extensive briefing on the Enforcement Motion, Judge Lorenz found it “beyond
9 dispute” that Defendant was not yet in compliance with Title IX with respect to equal
10 participation opportunities for female student-athletes at CPHS. (*See* ECF No. 249 at 4–
11 6.) Judge Lorenz further found that Defendant was not yet in compliance with Title IX
12 with respect to equitable treatment and benefits for female student-athletes at CPHS. (*See*
13 *id.* at 6–13.) Regarding both these aspects of Title IX compliance, Judge Lorenz was
14 concerned with Defendant’s “lack of verifiable documentation of compliance or even
15 attempted compliance,” characterizing its “absence of inventories” and “reports and
16 evaluations” as a “haphazard approach” to compliance. (*Id.* at 5, 12–13.) While
17 recognizing that Defendant had “taken some remedial measures . . . and made some
18 progress with gender equality in its athletic program,” Judge Lorenz found that any
19 “progress [was] not consistent, adequate, comprehensive or well documented, planned or
20 reasoned.” (*Id.* at 15.)

21 Accordingly, on March 17, 2014, Judge Lorenz granted Plaintiffs’ Enforcement
22 Motion and ordered Defendant to show cause why it should not be held in contempt for its
23 failure to comply with the permanent injunction. (*Id.* at 16.) Extensive and pointed briefing
24 on the OSC ensued and was completed after Plaintiffs filed a sur-reply on June 9, 2014.
25 (*See* ECF Nos. 256; 259; 262; 263.) In sum, Defendant submitted over 1,000 pages of
26 declarations and exhibits in support of its Statement of Cause, arguing that it had, and
27 continued to be, in full compliance with the permanent injunction. (*See* ECF Nos. 256;
28 262.) Plaintiffs in response argued that the Statement of Cause failed to show that

1 Defendant was *unable* to comply with the permanent injunction, the sole inquiry for the
2 contempt determination. (*See* ECF Nos. 259; 263.) Accusing Defendant of
3 gamesmanship, Plaintiffs contended that Defendant was attempting to relitigate the issue
4 of compliance—a determination Judge Lorenz had already made when he granted
5 Plaintiffs’ Enforcement Motion. (*See id.*) Plaintiffs requested that the Court order per
6 diem sanctions of \$500 until Defendant took steps to comply with the injunction. (ECF
7 No. 259 at 29.) Plaintiffs further sought an award of \$268,178.20 in attorneys’ fees and
8 costs incurred from bringing the Enforcement Motion and briefing the OSC. (*Id.* at 29–
9 30.) The OSC was never discharged.

10 Meanwhile, on January 30, 2014, Magistrate Judge McCurine issued a Report and
11 Recommendation with respect to the disputed provisions in the parties’ Joint Compliance
12 Plan. (ECF No. 246.) Notably, Magistrate Judge McCurine recommended that the Court
13 order a ten-year compliance period. (ECF No. 246.) The parties filed the Final Joint
14 Compliance Plan on February 13, 2014, and Judge Lorenz adopted Magistrate Judge
15 McCurine’s Report and Recommendation on March 24, 2014. (ECF Nos. 248; 251.)

16 Following the parties’ briefing on the OSC, Defendant began to submit fall, winter,
17 spring, and annual status reports beginning in September 2014, as required by the Final
18 Joint Compliance Plan. Since September 2014, Defendant has submitted over twenty
19 status reports to the Court. (ECF Nos. 266; 276; 287; 290; 299; 304; 312; 318; 320; 324;
20 328–30; 333; 336–38; 340–43; 348; 351.)

21 On December 20, 2019, the Court set an in-person, counsel-only Status Conference
22 to check-in with the parties and to inquire as to whether seasonal status reports remained
23 necessary for the duration of the compliance period. (ECF No. 344.) On February 18,
24 2020, the Court held the in-person Status Conference with counsel for the parties in
25 attendance. (ECF No. 347.) In advance of the Status Conference, the parties filed the
26 instant Joint Motion to Withdraw Enforcement Motion and Vacate Order to Show Cause
27 on January 16, 2020. (ECF No. 346.)

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1 **III. DISCUSSION**

2 The parties jointly request that the Court approve the withdrawal of Plaintiffs’
3 Enforcement Motion and discharge the OSC issued concurrently with the Order granting
4 the Enforcement Motion. Now six years into the ten-year compliance period, the parties’
5 joint motion illustrates how conditions—compliance with the permanent injunction and the
6 parties’ relationship—have changed since Plaintiffs filed the Enforcement Motion in 2013:

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8 Defendants have submitted over twenty timely [status] reports with
9 corresponding evidentiary documentation to the Court pursuant to the Joint
10 Compliance Plan. Plaintiffs have provided written feedback to Defendants on
11 every report and progress made towards the standards outlined in the Joint
12 Compliance Plan. The parties have a collaborative working relationship and
13 have open lines of communication regarding any issues or concerns that arise
14 and meet in person on at least an annual basis at the site visit (per the Joint
15 Compliance Plan). Since March 2017, Defendants have reported annual
16 substantial proportionality with regard[] to the girls’ and boys’ athletic
17 participation rates at [CPHS], a major factor in the [OSC].

18 (ECF No. 346 at 4 (citations omitted).)

19 Having reviewed the contentious history of this case, the Court agrees that the
20 circumstances present when Plaintiffs filed their Enforcement Motion seven years ago have
21 changed considerably, and for the better. From this Court’s perspective, Defendants now,
22 and for the past several years, have demonstrated at least substantial compliance with the
23 permanent injunction. As highlighted by the parties in their joint motion, the OSC was
24 prompted largely by Judge Lorenz’s finding that it was “beyond dispute” that Defendant
25 was still not affording female students at CPHS equal participation opportunities in
26 athletics in 2014. (*See* ECF No. 249 at 4–6.) The parties concur that since March 2017,
27 substantial proportionality has existed with respect to girls’ and boys’ athletic participation
28 rates. (ECF No. 346 at 4.) Defendant’s March 2017 status report indeed shows that in the
2016–2017 school year, females comprised 47.8% of the student enrollment, and of the
634 students who participated in fall, winter, and spring sports, 49.4% were female. (ECF
No. 328 at 8.) A review of the parties’ last three seasonal status reports for the 2019–2020

1 school year shows that substantial proportionality has remained. Females comprised
2 approximately 45% of the enrollment at CPHS and accounted for 54.1%, 63.5%, and
3 53.8% of all student-athletes participating in fall, winter, and spring sports, respectively.
4 (ECF Nos. 342 at 8; 343 at 8; 348 at 10).

5 In issuing the OSC, Judge Lorenz also expressed concern about Defendant’s “lack
6 of verifiable documentation” demonstrating that female student-athletes were receiving
7 equal treatment and benefits. (*See* ECF No. 249 at 6–13.) It appears that Defendant has
8 since implemented systematic record-keeping practices to monitor the CPHS athletic
9 program for gender equality. Defendant attached a variety of records to its March 2020
10 status report to demonstrate compliance, such as a Title IX planning calendar (ECF No.
11 348-22), team rosters (ECF No. 348-14), a softball field maintenance log (ECF No. 348-
12 30), practice schedules (ECF No. 348-32), coaching rosters (ECF No. 348-34), coach audits
13 and evaluations (ECF Nos. 348-35; 348-36; 348-37), an athletic trainer schedule (ECF No.
14 348-39), a weight room schedule (ECF No. 348-40), and a weight room sign-in sheet (ECF
15 No. 348-41). Defendant’s seasonal status reports dating back to at least 2017 show a
16 similar level of diligent record keeping and a further variety of records, such as uniform
17 and equipment inventories, equipment maintenance logs, locker room assignments, band
18 and cheer schedules, fundraising efforts, and student athletic interest surveys. (*See* ECF
19 Nos. 329-3; 333-3; 335-3; 337-3; 338-3; 340-3; 342-3; 343-3.)

20 In addition to Defendant’s genuine efforts to comply with the permanent injunction,
21 the parties’ relationship is now one of mutual respect and cooperation. The Court was able
22 to witness the parties’ professionalism and cordial relationship at the in-person Status
23 Conference on February 18, 2020. During the Conference, Plaintiffs reported that, while
24 there was still room for improvement, Defendant’s progress in complying with the
25 permanent injunction was to be applauded, and from Plaintiffs’ perspective, the issue of
26 contempt was moot. The parties further detailed that although they continue to have
27 occasional disagreements regarding compliance, they are able to reconcile their
28 disagreements through discussion. The parties also shared with the Court that on October

1 29, 2019, Dr. Vernon Moore (Chief Compliance Officer for SUHSD) and Ms. Jennifer
2 Carbuccia (general counsel for SUHSD) even conducted a presentation titled, “Thriving
3 Under a Court-Ordered Title IX Compliance Plan,” which included a review of Title IX
4 law as well as references to the CPHS Title IX case. (See ECF No. 343-7.) The parties’
5 cooperative spirit is further demonstrated by the fact that the current request to discharge
6 the OSC is before the Court on a joint motion.

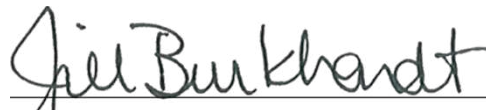
7 Considering the totality of the circumstances, the Court finds that the ends of justice
8 would no longer be served by holding Defendant in contempt for previous non-compliance
9 with the permanent injunction. Accordingly, the Court **RECOMMENDS** that the District
10 Court **GRANT** the parties’ joint motion.

11 **IV. CONCLUSION**

12 For the reasons discussed above, **IT IS HEREBY RECOMMENDED** that the
13 District Court issue an Order: (1) approving and adopting this Report and
14 Recommendation; (2) **GRANTING** the parties’ Joint Motion to Withdraw Enforcement
15 Motion and Vacate Order to Show Cause (ECF No. 346); (3) approving the
16 **WITHDRAWAL** of Plaintiffs’ Motion to Enforce Permanent Injunction (ECF No. 225);
17 and (4) **DISCHARGING** the Order to Show Cause (ECF No. 249). Any objections to this
18 Report and Recommendation shall be filed in accordance with 28 U.S.C. § 636(b)(1)(C).

19 **IT IS SO ORDERED.**

20 Dated: July 9, 2020

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22 Hon. Jill L. Burkhardt
23 United States Magistrate Judge
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