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THE BULLIS-PURISSIMA ELEMENTARY SCHOOL
7

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION
12

13 THE BULLIS-PURISSIMA ELEMENTARY
SCHOOL, a California nonprofit public benefit
14 corporation,

15 Plaintiff,

16 v.

17 SANTA CLARA COUNTY BOARD OF
EDUCATION, a public entity; SANTA CLARA
18 COUNTY OFFICE OF EDUCATION, a public
entity,
19

20 Defendants.
21
22
23
24

CASE NO.: 5:24-cv-08527

**SECOND AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DAMAGES**

I. INTRODUCTION

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2 1. This action challenges an egregious, well-documented pattern and practice of a public
3 education board and agency with jurisdiction over Santa Clara County schools openly and
4 deliberately singling out and applying an overtly race-based discriminatory practice on a public
5 charter school for serving *too many* Asian and *not enough* Hispanic students, threatening the
6 continued existence of that high-performing school and subjecting it to adverse treatment in defiance
7 of federal law.

8 2. The Bullis-Purissima Elementary School operates Bullis Charter School (“BCS”). For
9 two decades, BCS is and has been a high performing TK-8 public charter school located within the
10 geographic boundaries of Los Altos School District (“LASD”) and authorized by the Santa Clara
11 County Board of Education (“SCCBOE”). BCS is unquestionably the highest-performing public
12 school in Santa Clara County, and consistently at the very top state-wide. It represents the very best
13 of what public schools can be and is a model for many other schools nationally. Charter schools are
14 tuition-free public schools funded by state and federal education dollars and are subject to periodic
15 renewal of their charters based on performance; if a charter school is not renewed, it is subject to
16 closure. BCS is authorized to operate in its current charter term through June 30, 2025, and on June 3,
17 2024, sought renewal from SCCBOE for a seven-year term from July 1, 2025 through June 30, 2032.
18 Under the law, a designated “high performing” charter school like BCS is entitled to renewal of its
19 charter except in narrow circumstances not applicable here. The SCCBOE renewed the charter for
20 five years in the early hours of August 27, 2024, but attempted to impose so-called “conditions” on its
21 approval, in defiance of and inconsistent with charter school renewal law, and including race-based
22 restrictions in defiance of and inconsistent with federal law, notably the Civil Rights Act of 1964 and
23 the U.S. Constitution’s guarantee of Equal Protection under the law.

24 3. BCS brings this action against SCCBOE and the Santa Clara County Office of
25 Education (“SCCOE”) for subjecting BCS and its students, and those children and their families who
26 wish to attend, to unlawful discriminatory practices on the basis of race, specifically, that BCS has
27 enrolled too few Hispanic yet too many Asian students.

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1 4. Despite indisputably being the most diverse school within the geographic boundaries of
2 LASD, and more closely resembling the demographics of that local district than the vast majority of
3 other charter schools overseen by SCCOE, County officials nonetheless single out and discriminate
4 against BCS and its families because of BCS’s predominately Asian enrollment and Defendants’
5 requirement that BCS achieve a racial balance in order to satisfy Defendants. Ironically, BCS appears
6 to draw criticism not because of poor academic performance, but for outstanding performance. In
7 fact, the local competitor school district (LASD) has copied or emulated some of BCS’s programs,
8 which is one of the legislative purposes of charter schools: “to increase learning opportunities for
9 all”. Because of its success and popularity, BCS is by far the largest public school operating within
10 the LASD—one out of every four public TK-8 students residing within LASD attends BCS, and
11 nearly one out of every three attends or wants to attend. Further, BCS serves a proportionate number
12 of children with special education needs. BCS’s work in this area is exemplary.

13 5. SCCOE and SCCBOE are insisting that BCS achieve de facto *racial quotas*, but
14 conveniently resist calling them that in light of the illegality of the term. But, nonetheless, BCS has
15 been and is subject to punitive governmental action by SCCOE because, in the apparent opinion of
16 SCCOE officials, BCS has too many students in one particular racial group (i.e., Asian) and too few
17 students in another particular racial group (i.e., Hispanic). Importantly, BCS’s Hispanic enrollment is
18 consistent with the overall general population in the district where it operates (LASD), and the
19 enrollment of schools within LASD. Per SCCOE and SCCBOE, “BCS is not serving an appropriate
20 mix of students,” i.e., BCS has not mirrored the racial proportions of the school district where BCS is
21 located. SCCOE thus unlawfully ordered BCS “to correct the fact that the Hispanic ... student groups
22 are underrepresented at BCS,” subjected BCS to government overreach and harassment for not
23 meeting SCCBOE’s unlawful requirements, and has unlawfully subjected BCS’ renewal to conditions
24 that were beyond SCCBOE’s authority to impose.

25 6. As a consequence of SCCBOE and SCCOE’s discrimination, SCCBOE refused to
26 renew BCS’ charter as presented (which it was unconditionally required to do under state law) and
27 instead, renewed with the imposition of unlawful conditions and ordered that BCS enter into a
28 contract with SCCBOE (which it calls a “memorandum of understanding” or “MOU”) by which BCS

1 was obligated to alter its charter petition, modify admissions preferences, take on additional
2 obligations, and continue to satisfy SCCBOE’s unlawful demand that BCS achieve the racial
3 composition that SCCBOE insists upon enforcing.

4 7. On August 27, 2024, SCCBOE renewed BCS’ charter through June 30, 2030, but
5 SCCBOE’s so-called conditions are unlawful, and SCCBOE weaponized those conditions (including
6 one whereby SCCBOE would force BCS to contractually gag its First Amendment right to
7 acknowledge the unlawfulness of the conditions) in an effort to prevent BCS from attaining peace
8 with its renewal. Notwithstanding BCS’ objections to the conditions and its view that the
9 discriminatory conditions and MOU were abusive and unfair, BCS spent the three months from
10 August 28, 2024 until mid-December 2024, conferring in good faith with SCCOE staff on the form of
11 the MOU that would further memorialize SCCBOE’s renewal action. On SCCOE staff’s request to
12 sign the “executable copy” of the final version presented by SCCOE and SCCBOE’s attorney, BCS’
13 governing board approved the MOU on November 15, 2024. But just days later on November 20,
14 2024, SCCBOE refused to do the same in an incredible display of bad faith. Specifically, the majority
15 of board members refused to approve the MOU because they detested a factual *recital* therein noting
16 for the record BCS’ position that it disagreed with SCCBOE’s findings. In other words, SCCBOE
17 rejected the very same MOU that it itself required and the SCCOE staff prepared and recommended
18 as a “condition of approval” for the renewal, because it dared to state the obvious truth – that BCS
19 disagreed with SCCBOE but was willing to enter into the MOU subject to its reservations in order to
20 reach a resolution on BCS’ status with SCCBOE. Yet, SCCBOE found it unacceptable that the MOU
21 would acknowledge BCS’ opinion and dare to disagree with SCCBOE, notwithstanding BCS’ First
22 Amendment rights. Further, SCCBOE’s deliberation and action on November 20, 2024 underscores
23 its flagrant disregard for law and due process, conduct openly exhibited by a majority of its board.

24 8. Also at its public meeting of November 20, 2024, SCCBOE unanimously approved two
25 other unrelated charter renewals, both having racial demographics much more inconsistent than that
26 of the local districts where they operate as compared to BCS, by orders of magnitude. The double-
27 standard that SCCBOE has imposed with regard to racial composition—the “mix” it demands—was
28 glaringly apparent. Led by its board president who seemingly relishes her ignorance of civil rights

1 and law, SCCBOE has plainly indicated that it favors one particular racial background over another,
2 no matter how unlawful that may be.

3 9. SCCBOE’s rabid hostility towards BCS, stemming from BCS’ racial composition
4 (more Asian than Hispanic students) is unbecoming of public education officials, to say the least. In
5 particular, as will be demonstrated at trial, several of the SCCBOE members made statements
6 exhibiting their outright racist positions repugnant to law and public education. SCCBOE is
7 effectively imposing an unconstitutional gag on BCS’ right to express its opinion in the very forum
8 where parties customarily describe the very disagreements preceding execution of the agreement – *the*
9 *recital section*. SCCBOE will only permit its own opinion to be documented in the record:

~~WHEREAS, Charter School contends that factual evidence did not support any finding
that Charter School actually excluded any student who wished to attend, and disagrees with and
objects to the Conditions; and~~

WHEREAS, the County Board and SCCOE contend that the factual evidence and the law
are consistent with and support the County Board’s action on the Charter Renewal; and

14 The foregoing shows the strikeout directed by SCCBOE to the version SCCOE staff requested BCS to
15 sign—which it did.

16 10. SCCBOE ignored the advice and recommendations of its own staff and counsel related
17 to the MOU because SCCBOE’s priority appears to be to punish and demean BCS for standing up to
18 SCCBOE’s racist, abusive defiance of the law, over all else. Members of the SCCBOE are
19 completely unhinged, and its conduct against its own staff is tragically on par with SCCBOE’s
20 current state of utter disarray. In an October 2024 report from the State of California’s Fiscal Crisis
21 and Management Team (“FCMAT”), FCMAT found, among other issues, that:

- 22 • “[t]he situation at ... SCCOE ... between ... SCCBOE ... and the office’s
23 administration has and continues to exhibit this type of dysfunction and has
24 become dire...”
- 25 • “The board has not been regularly updating or following bylaws, which is an
26 indicator of risk related to governance.”
- 27 • “Staff also indicate that in addition to micromanagement there is a lack of
28 professionalism in how the board interacts with staff and the county
superintendent.”
- “The micromanagement by the board creates significant risk for the Santa Clara
County Office of Education and has been a pervasive problem for more than a
decade.”

- “[T]he county board is ... [not] performing within the boundaries of the primary responsibilities of a county board” and “the poor relationship between the board and the administration at the county office is diminishing the productivity of both entities, which in turn is diverting valuable resources away from the students of Santa Clara County.”

11. BCS has been caught in the crosshairs of this dysfunction and subjected to the worst instincts and whims of certain SCCBOE board members who are ostensibly responsible for modeling good and fair practices in public education. Just as reason has not prevailed between and among SCCBOE and SCCOE, SCCBOE is unwilling to own up to and remedy its unlawful treatment of BCS. SCCBOE has placed BCS in the untenable position of trying to negotiate against itself with regard to unlawful conditions SCCBOE attempted to impose on its charter renewal, most of which are the result of race-based considerations and inherently unlawful, and trying to appease an out-of-control public board that has sought to harm BCS at every step of the way. Ultimately, BCS had no actual choice: Execute an MOU that was unlawfully required and borne of a racist and unlawful premise, or face non-renewal and closure. Faced with a Hobson’s choice (which is no choice at all), BCS executed the MOU under stated protest while it litigates its claims against Defendants before the Court. (See Attachment A.) BCS brings this action to put an end to SCCBOE’s unlawful discriminatory practices and harassment on the basis of race, and for a judicial declaration that SCCBOE’s attempt to impose conditions on BCS’ renewed charter stemming from race-based considerations are unlawful, unenforceable, and shall be disregarded in their entirety.

II. PARTIES

12. Plaintiff BCS is a California nonprofit public benefit corporation that operates a public charter school in Los Altos, California, and has done so since 2004. BCS has standing to bring this action to enforce Sections 601 and 602 of Title VI of the Civil Rights Act of 1964 pursuant to 29 U.S.C. §794a(a)(2), which provides, “[t]he remedies, procedures, and rights set forth in Title VI of the Civil Rights Act of 1964...shall be available to any person aggrieved by any act or failure to act by any recipient of Federal assistance....”

13. Defendant SCCBOE is responsible for overseeing schools and educational programs within Santa Clara County, as well as for overseeing and setting the policies of Santa Clara County

1 Office of Education (“SCCOE”). SCCBOE is the chartering authority of BCS and its responsible for
2 reviewing and acting on periodic petitions to renew BCS’ charter consistent with applicable laws.

3 14. Defendant SCCOE is a large public educational agency responsible for overseeing
4 educational programs in Santa Clara County as provided by the law, including overseeing charter
5 schools that are authorized by SCCBOE.

6 **III. JURISDICTION**

7 15. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331 and 28 U.S.C.
8 §1343(a)(3) because this case involves a civil action arising under the Constitution and the laws of the
9 United States. The Court has authority provide relief under the Declaratory Judgment Act, 28 U.S.C.
10 §2201.

11 **IV. VENUE**

12 16. Venue is proper in that the Defendants’ operations are in the Northern District of
13 California and all of the events or omissions giving rise to this action arose in Santa Clara County,
14 which is located within the Northern District of California.

15 **V. DIVISIONAL ASSIGNMENT**

16 17. This civil action arises in the County of Santa Clara and therefore assignment in the San
17 Jose Division is proper pursuant to Local Rue 3-2(d).

18 **VI. FACTUAL ALLEGATIONS**

19 18. Since the earliest wave of immigration from China in the 19th century, Asians have
20 faced rampant discrimination throughout California and the United States, from the Chinese
21 Exclusion Act, to the Alien Land Law of 1913, to mandated school segregation in San Francisco,
22 marriage restrictions, to Japanese interment, and even a California law once upheld by the California
23 Supreme Court providing that no Chinese person could testify in a California court against a white
24 person.

25 19. Today, Asian Americans are the increased target of racial abuse and violence, with one
26 in three Asian Americans reporting that they have experienced oppression and acts motivated by
27
28

1 racial hate*^{*}; a 2022 report found a 339 percent nationwide increase in anti-Asian hate crimes over the
 2 prior year.[†] Meanwhile, Asian Americans remain as “others” throughout public life – as a “model
 3 minority” – a “myth does three things: first, obscures anti-Asian American racism; second, renders
 4 Asian Americans invisible to broader society; and third, implies that Asian Americans don’t need
 5 anti-racist programs.”[‡]

6 20. This kind of racism - racial discrimination against Asian Americans – is plainly alive
 7 and well among Defendants SCCBOE and SCCOE. These government agencies have determined
 8 that BCS does not have the “appropriate mix” of students – their words – because 61.9% of BCS
 9 students are Asian, and in their view, this is too many because it precludes enrollment of the quota of
 10 Hispanic students upon which SCCBOE insists; i.e., if BCS enrolled fewer Asian students, by
 11 SCCBOE’s logic, more Hispanic students would occupy those spaces and meet SCCBOE’s quotas.
 12 Because BCS has not met the illegal quota requirements that SCCBOE has set, SCCBOE has
 13 subjected BCS to adverse action motivated by discriminatory animus, in violation of the United States
 14 Constitution and Title VI of the Civil Rights Act of 1964.

15 21. As required by law, enrollment at charter schools like BCS is open to every California
 16 student who is age-eligible to attend. Where family demand for seats exceeds capacity, BCS conducts
 17 a random public drawing to determine admission as the law requires. BCS does not and has never
 18 preferred students in admission on the basis of race. Race is not considered at all as part of the
 19 application nor in the admission process, consistent with state and federal law that prohibits the same.
 20 Other than preferences for siblings of existing students (to ensure siblings attend school together) and
 21 preferences for children of staff (to support the needs of staff), the students who are ultimately
 22 enrolled at BCS reflect a subset of the application pool, i.e., enrollment is made up of those students
 23 whose families have elected to apply and have randomly earned a spot. As a charter school, BCS
 24 does not and cannot require any student to apply to attend BCS.

25
 26 * <https://www.pbs.org/newshour/politics/1-in-3-u-s-asians-and-pacific-islanders-faced-racial-abuse-this-year-says-ap-norc-aapi-data-poll>

27 † <https://www.nbcnews.com/news/asian-america/anti-asian-hate-crimes-increased-339-percent-nationwide-last-year-repo-rcna14282>

28 ‡ <https://naturalsciences.rice.edu/dei-poster-model-minority-myth-and-how-it-harms-asian-americans>

1 22. Although BCS does not consider race in its admission process, BCS has undertaken
 2 numerous steps over the past several years to encourage a diverse applicant pool, including through
 3 the following means:

- 4 a. Hiring a full-time employee dedicated to recruiting a diverse student body.
- 5 b. Providing an admission preference for students who are socioeconomically
 6 disadvantaged.
- 7 c. Providing admissions materials in multiple languages, including Spanish.
- 8 d. Translating BCS’ website into multiple languages, including Spanish.
- 9 e. Promoting BCS as an option to diverse families by participating in various
 10 community events and posting information throughout Los Altos.

11 23. Over the past five years, BCS’ recruitment efforts have earned BCS the status as one of
 12 the most diverse and least-white public schools in Los Altos by multiple measures, but that diversity
 13 is deemed not good enough by SCCBOE because BCS’ Hispanic population does not statistically
 14 match the percentage of students enrolled at LASD who are Hispanic, with the precision SCCBOE
 15 demands. SCCBOE also unfairly and unlawfully treats Asian students monolithically, ignoring that
 16 Asia is the most populated continent on the planet with 48 countries, and ignoring the diversity of
 17 Asian students that attend BCS.

18 **BCS Student Subgroup Growth**

19 Subgroup	BCS 2018-19	BCS 2023-24
20 Socioeconomically Disadvantaged Students (SED)	1.4%	3.7%
21 Students with Disabilities (SWD)	6.7%	7.8%
22 English Learner Students (EL)	5.7%	8.9%
23 Hispanic	3.8 %	4.5%

24 **Comparison to Schools Within Los Altos School District**

25 School	Hispanic	EL	SED	SWD
26 Loyola Elementary	4.3%	10%	2.6%	13.1%
27 Oak Avenue Elementary	4.9%	3%	3%	6.7%
28 Bullis Charter	4.5%	8.9%	3.7%	7.8%

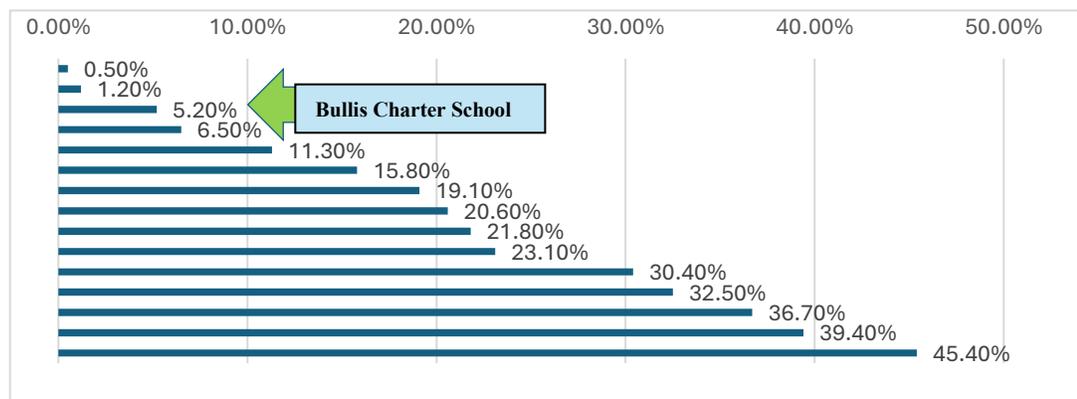
Comparison to Los Altos School District

	<u>BCS</u>	<u>Los Altos School District</u>
African American	0.20%	0.50%
American Indian	0.10%	0.10%
Asian	61.90%	39.50%
Filipino	1.40%	0.80%
Hispanic	4.50%	9.60%
Pacific Islander	0.10%	0.20%
White	16.60%	36.10%
Two or More Races	12.90%	12.90%
Not Reported	2.40%	0.40%

24. Because BCS continues to have, per SCCBOE’s mandate, too many Asian students and insufficient Hispanic students (as compared to LASD), SCCBOE has subjected to BCS to adverse treatment, deprivation of rights under the law, and ongoing harassment. In particular, SCCBOE has perpetrated a lie that BCS has excluded Hispanic students who “wish to attend” with zero evidence of that ever happening – zero. Over the past six years, SCCBOE has issued numerous letters to BCS falsely accusing BCS of excluding students on the basis of race and demanding that BCS “cure” the issue by achieving the “appropriate mix” of races that SCCBOE demands.

25. Significantly, Santa Clara County Board of Education authorizes fifteen charter schools that operate within school district boundaries (California Education Code Section 47605 charters), and BCS has one of the smallest variances between its Hispanic school population and the population of the surrounding school district.

Percentage Difference Between Charter School Hispanic Populations and District Hispanic Populations in Charter Schools Authorized by SCCBOE (Dataquest, 2022-23)



1 Yet, SCCBOE does not bully and harass those other charter schools on their “population imbalance”
2 nor threaten them with non-renewal of their charters, nor constructively deny their charters for their
3 “population imbalance” as SCCBOE has done here as to BCS. SCCBOE only subjects BCS to
4 unlawful discrimination and adverse treatment because BCS has enrolled too many Asian students and
5 too few Hispanic students in SCCBOE’s opinion.

6 26. On June 3, 2024, BCS submitted its charter renewal petition to SCCBOE seeking a
7 seven-year renewal term as supported by law that high-performing charter schools like BCS should
8 be “presumptively renewed”. On August 4, 2024, SCCOE “reaffirmed” its prior command to BCS
9 with regard to BCS’ “need to correct the under-representation at BCS of historically underserved
10 student groups.” In SCCOE’s staff report on BCS’ renewal petition dated August 9, 2024 (see
11 Attachment B), SCCOE contended that “there continues to be underrepresentation of some
12 historically underserved student groups at Bullis,” i.e., Hispanic students, and that as a consequence,
13 BCS only merited “conditional approval” (a punitive measure which the law does not recognize).

14 27. At SCCBOE’s August 26, 2024 decision meeting on BCS’ charter renewal petition,
15 SCCOE indicated that approval of BCS’ renewal petition (otherwise subject to “presumptive”
16 renewal for up to seven years under state law) was not warranted because BCS has not “fully
17 achieved being reflective of the district” with regard to racial and ethnic makeup which was defined
18 by SCCOE as the absence of a “statistically significant” difference between the population makeup of
19 the District and BCS. In other words, SCCOE and SCCBOE’s willingness to confer an otherwise
20 mandatory government benefit upon BCS (a renewed charter petition without conditions) is
21 dependent on BCS attaining a particular level of enrollment of particular racial groups (fewer Asian
22 and more Hispanic), i.e., levels of enrollment that do not reflect a “statistically significant” variance
23 with the District. SCCOE was plainly wrong. SCCBOE engaged in no discussion of BCS’ status as a
24 high performing charter school and the legal implications of BCS’ status; SCCBOE focused
25 singularly on its view that BCS excludes students who wish to attend, i.e., by enrolling too many
26 Asian students and insufficient students from other groups.

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1 28. Defendants are expected to deny that their efforts to direct and manipulate the student
2 population makeup at BCS is racist, and instead, they will say that their work is designed to advance
3 the interests of “historically underserved” racial groups – their words. By this, Defendants have
4 decided that some racial minorities deserve Defendants’ advocacy (resources funded with taxpayer
5 dollars) but that some racial minorities do not. Defendants have decided that they get to pick and
6 choose who is and who is not “historically underserved” along racial lines. For Defendants, their
7 determination that Asian-Americans are *not that* reeks of the tired and racist “model minority” trope.

8 29. Because BCS has not met the racial quotas that Defendants demand, Defendants have
9 falsely labeled BCS as a non-compliant charter school that has violated the law, subjected BCS to
10 harassment, government overreach, and sham investigations, and taken adverse action against BCS’
11 charter. As a high-performing charter school, BCS was entitled to renewal of its charter petition.
12 Instead, and because BCS has not met Defendants’ racial quotas, Defendants deprived BCS of the
13 government benefit of straight “approval” and instead, attempts to impose “conditions” on approval –
14 a status in which SCCOE demanded that BCS enter into an oppressive MOU with Defendants.
15 Ironically, the SCCBOE rejected the very MOU the SCCOE staff demanded that BCS sign (which it
16 did).

17 30. BCS filed an appeal with the State Board of Education under Education Code Section
18 47605(k) to avoid waiver of its statutory appeal right should the conditional approval be deemed the
19 same as a denial. State Board staff dismissed the appeal on the basis that SCCBOE’s action on BCS’
20 charter petition was a renewal and not a denial for purposes of triggering State Board review. Thus,
21 the State of California deems the charter renewed. To avert disaster for students and staff and to
22 mitigate against catastrophic consequences that could follow if BCS refused to cooperate with
23 SCCBOE’s unlawful conditions, BCS has attempted to meet and confer in good faith with SCCOE
24 staff to reach an MOU with SCCBOE under protest – the MOU BCS is required to execute as one of
25 the unlawful “conditions” of approval. Specifically, SCCBOE is requiring BCS to change operational
26 provisions in its petition, modify admission preferences that are otherwise lawful and customary for
27 other schools authorized by SCCOE, and require BCS to maintain and continue to implement a plan
28 to achieve the racial quotas that SCCBOE demands—all at the pain of revocation of the charter. All

1 of these conditions and requirements forced upon BCS, but not other schools, and that fact that BCS’
2 approval is conditioned at all, is due to adverse treatment on the basis of race, that BCS has too many
3 Asian students which results in too few Hispanic students enrolling at BCS.

4 31. For nearly three months, BCS conferred in good faith with SCCOE and on an MOU
5 that would implement SCCBOE’s conditions, and correctly acknowledging in a *recital* that “Charter
6 School contends that factual evidence did not support any finding that Charter School excluded any
7 student who wished to attend, and disagrees with and objects to the Conditions....” (It also included a
8 recital reflecting SCCBOE’s position to the contrary.)

9 32. At SCCOE staff’s request, BCS’ Board approved the MOU on November 15, 2024 as a
10 prerequisite for SCCOE staff even submitting it to SCCBOE for consideration. It was agendized for
11 SCCBOE’s approval on November 20, 2024 with SCCOE staff’s recommendation that SCCBOE
12 approve. SCCBOE derailed the approval and voted against the MOU—one of the unlawful
13 conditions it had three months earlier imposed. SCCBOE voted down the MOU on the basis that the
14 MOU included a recital reflecting BCS’ opinion heading into the agreement.

15 33. Thus, even where BCS attempted to jump through the hoop that SCCBOE has set – an
16 MOU that BCS negotiated with SCCOE – SCCBOE would not even abide by the very condition it
17 had set. SCCBOE’s conduct, from its aggressive notices and demands over the past years, to its
18 conditional approval of BCS’ renewal petition, to its behavior in voting down the kind of MOU that
19 SCCBOE insisted upon as a condition for renewal, all derives from SCCBOE’s discriminatory
20 animus: that BCS has enrolled too many Asian students, and is taking admission spots that SCCBOE
21 believes should go to students from other groups and meet quotas.

22 34. Finally, after BCS filed this litigation, SCCBOE agendized an action item at its
23 December 18, 2024 meeting to approve the version of the MOU that SCCBOE was requiring BCS to
24 execute under the threat and pain of school closure, i.e., the version of the MOU that barred BCS
25 from expressing its criticism of SCCBOE’s conditions for renewal next to SCCBOE’s recital
26 expressing SCCBOE’s opinion that it acted properly. At the meeting, SCCBOE approved that
27 version of the MOU with even more changes at the dais that went beyond the conditions SCCBOE set
28 for renewal on August 27, 2024. SCCBOE presented this MOU to BCS as a matter of take-it-or-

1 leave-it coercion: That BCS Board approve it by January 6, 2025 or else BCS’ charter renewal
2 petition would be deemed denied. In the interests of maintaining the status quo and ensuring the
3 continuity of BCS’ school program for roughly 1,000 students during the pendency of this litigation,
4 BCS executed the MOU under stated protest. Defendants accepted BCS’ submission, and confirmed
5 to the California Department of Education on January 9, 2025 that BCS’ charter had been renewed
6 through June 30, 2030.

7 **VII. CAUSE OF ACTION**

8 **FIRST CAUSE OF ACTION**

9 **Violation of Title VI of the Civil Rights Act of 1964**

10 **(Against All Defendants)**

11 35. Plaintiffs incorporate herein by reference each and every allegation contained in the
12 preceding paragraphs of this Complaint as though fully set forth herein.

13 36. Title VI of the Civil Rights Act of 1964 provides that “[n]o person in the United States
14 shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the
15 benefits of, or be subjected to discrimination under any program or activity receiving Federal
16 financial assistance.” 42 U.S.C. §2000d.

17 37. SCCBOE and SCCOE have subjected BCS to adverse treatment on the basis of racial
18 discrimination, specifically, that BCS’ student population makeup includes Asian students in excess
19 of what SCCBOE and SCCOE demands to be statistically appropriate and that BCS must achieve a
20 racial balance that is acceptable to SCCBOE and SCCOE. School admission is a zero-sum game with
21 a fixed enrollment cap for charter schools like BCS, such that increasing the proportional
22 representation of one racial group requires decreasing the enrollment of another racial group.
23 Defendants’ demand that BCS increase the enrollment of Hispanic students must be understood for
24 what it is, as a demand that BCS decrease the enrollment of its Asian students who are enrolled
25 beyond the proportions enrolled within LASD. This is simply the math and logic of the situation, and
26 it should be no surprise that Defendants are tactful enough to not overtly call for a decrease in Asian
27 students or “quotas” for others. This tactfulness does not mean that there is no indicia of
28 discriminatory intent – there is, as addressed below.

1 38. On the basis of SCCBOE and SCCOE’s determination that BCS has not achieved the
2 “appropriate mix” of students it requires and Defendants’ demand that BCS achieve a racial balance,
3 Defendants have subjected BCS to the following adverse actions. Plaintiff contends that these
4 adverse actions are the result of discriminatory animus that existed prior to and at the time SCCBOE
5 made its decision to conditionally renew BCS’ charter on August 26-27, 2024.

- 6 a. SCCBOE deprived BCS of the benefit of unconditional charter renewal that was
7 required by law to be granted to BCS as a high performing charter school, including the
8 benefit of a seven-year renewal term as the law indicates, and in violation of its
9 fundamental vested property right to continue the operation of its high-performing
10 charter school.
- 11 b. SCCBOE refused to grant BCS renewal petition as presented (and as required by law),
12 and granted renewal subject to unlawful conditions, e.g., that BCS’ enter into a contract
13 with Defendant that modified BCS’ renewal petition and imposed various terms,
14 including implementation of a “corrective action plan” to achieve the racial quotas
15 demanded by SCCBOE and SCCOE. SCCBOE’s requirement that BCS execute the
16 demanded MOU as presented to secure BCS’ charter renewal stemmed from
17 Defendants’ unlawful discrimination on the basis of race, in violation of Title VI.
18 Given Defendants’ decision that BCS’ charter would be deemed non-renewed if BCS
19 did not execute the MOU, as a consequence of Defendants’ coercive tactics, BCS
20 executed the MOU under stated protest.
- 21 c. SCCBOE and SCCOE have harassed and bullied BCS over at least the past six years on
22 the basis that BCS’ student population has not met SCCBOE and SCCOE’s
23 “appropriate mix,” quota expectations or “achievement” of a racial “balance”, and as a
24 consequence, BCS has expended substantial resources in time, personnel, and money to
25 respond to and address SCCBOE and SCCOE’s unfounded and unlawful criticism.
26 SCCOE sent a formal notice in 2021 stating that BCS “has not been effective in helping
27 bring Bullis’ enrollment into closer alignment with LASD’s population” with regard to
28 too few Hispanic and too many Asian students, and that “Bullis should be required [to]

1 expand its efforts as necessary to achieve the requisite balance” that SCCOE insists
2 upon. SCCOE’s May 2021 command was that “BCS must address this concern,
3 including the creation and implementation of a corrective action plan that will result in
4 increasing the proportions of the BCS student body who are [Hispanic].” Again, BCS
5 more closely resembles the demographics of the school district where it is located that
6 nearly all other schools overseen by SCCBOE. But none of those other schools are
7 harassed by SCCOE about demographics, i.e., where the disproportionality is not about
8 too many Asian students.

9 39. While a Title VI plaintiff is not required to plead facts demonstrating discriminatory
10 intent – particularly on a pre-discovery basis – and intent is not required to be proven with direct
11 evidence but is a matter for determination by a jury, BCS alleges the following circumstantial indicia
12 of intent from which a jury may find that the adverse actions BCS faced and continues to face were
13 caused by Defendants’ discriminatory animus:

- 14 a. The letters from Defendants to BCS during the preceding years repeatedly criticize
15 BCS’ alleged racial imbalance and resulted in the requirement imposed by Defendants
16 for BCS to implement a corrective action plan to address racial imbalance and actually
17 achieve a racial balance from that plan. Defendants stated on May 21, 2021 that
18 “[b]ased on the substantial issues and concerns described above,” regarding racial
19 imbalances, “SCCOE is issuing this Notice supporting a determination that BCS is
20 demonstrably unlikely to successfully implement its program because it is not serving
21 all pupils who wish to attend, and as a general notice of concern about the need to
22 correct the fact that the Hispanic ... student groups are underrepresented at BCS.”
23 (May 21, 2021 letter at p. 11.) Achieving that plan would have required taking
24 aggressive actions to discourage Asian enrollment or crowding out Asian enrollment.
- 25 b. Defendants have singled out and solely targeted adverse actions at BCS based on
26 alleged population balance issues at BCS and not at the 14 other charter schools
27 authorized under Section 47605 that Defendants oversee (See chart, ¶25) The
28 difference is that Defendants celebrate when Hispanic students are overrepresented

1 because Defendants deem them to be “historically underserved” but find it
2 unacceptable when the overrepresented racial group is Asian as at BCS.

- 3 c. Defendants have justified their treatment of BCS on the basis that Asian students are
4 not “historically underserved” but this reflects a racist “model minority” trope.
- 5 d. When four other charter schools authorized by SCCBOE came up for charter renewal in
6 the 2024-25 renewal cycle, Defendants did not issue notices to cure and correct racial
7 imbalances where Asian students were underrepresented nor contend under Education
8 Code Section 47607(e) that those schools were excluding students on the basis of
9 “statistically significant” differences between the charter school’s population and the
10 population of the school district where the charter school is located, as they did against
11 BCS. Defendants did not require them to enter into or implement corrective action
12 plans to address racial imbalance, as they did against BCS. For example, at the
13 September 4, 2024 public hearing and October 16, 2024 SCCBOE action to renew
14 Alpha Public Schools - Jose Hernandez (“APS”), the stark difference in treatment was
15 on display. APS is a “low-performing” or “low-track” school with a presumption of
16 denial unless certain findings can be made—the opposite from BCS’s high track
17 designation. At the September 4, 2024 public hearing, APS officials confirmed that the
18 APS school significantly exceeded the district percentage of Hispanic enrollment. Not
19 a single SCCBOE member or staff questioned that fact, because it’s true. Later that
20 hearing, the SCCBOE board president asked what steps the school would take to meet
21 racial balance requirements of Element G. APS officials simply stated that they recruit
22 from the neighborhood where the school is located. There were no further questions or
23 any criticism at all. When SCCBOE approved the APS low-track renewal two weeks
24 later at its October 16, 2024 meeting, there was no mention of racial imbalance, no
25 negative findings from the SCCOE staff or SCCBOE in that regard, and no conditions
26 imposed to plan for or meet any race-based requirements. And notably, APS was not
27 entitled to the presumptive renewal; rather, the presumption was for denial—the
28 opposite of Bullis. This fact amplifies the severity of the adverse impact on Bullis

- 1 caused by Defendants’ impermissible race-based treatment and discriminatory animus.
- 2 e. Defendants are clear their problem with Bullis is one of racial balance, that “[t]he
- 3 Asian, White, and Hispanic or Latino student groups ... are not reflective of their peer
- 4 groups at LASD.” (Staff Report. p. 28.) “Bullis’ student demographics do not closely
- 5 reflect the demographics of LASD, as there are statistically significant differences. In
- 6 adopting the County Staff Report and conditional approval, Defendants found that
- 7 “there continues to be a statistically significant difference in the enrollment of students
- 8 who are Hispanic/Latino ... between Bullis and LASD.” (Staff Report p. 30.)
- 9 f. In adopting the County Staff Report and conditional approval, Defendants found that
- 10 “there continues to be underrepresentation of some historically underserved student
- 11 groups at Bullis, to a statistically significant degree when compared to LASD... Thus,
- 12 the corrective action plan [required by Defendants] has not yet been successful”. (Staff
- 13 Report p. 54.)
- 14 g. In adopting the County Staff Report and conditional approval, and as a continuation of
- 15 prior conduct by Defendants, Defendants have falsely characterized the lack of
- 16 statistical parity between BCS and LASD’s student populations as measured by race as
- 17 proof that BCS is “not serving all students who wish to attend.” (*See, e.g.*, Staff Report
- 18 pp. 21, 32, 44.) Defendants have never once produced any evidence that BCS has
- 19 prevented students who wished to attend from attending based on race. This lie
- 20 designed to harm BCS through a salacious claim – that BCS is excluding Hispanic
- 21 students – reflects Defendants’ animus towards BCS’ existing population along the
- 22 lines of race.
- 23 h. Defendants assert that their approach to BCS derives from Education Code Section
- 24 47605(c)(5)(G), but as addressed above, Defendants only purport to implement Section
- 25 47605(c)(5)(G) and demand the “achievement” of a racial balance with respect to BCS
- 26 but not any other charter school they oversee. This serves as indicia of discriminatory
- 27 intent. In any event, requiring that BCS “achieve” or take steps to achieve a racial
- 28 balance is unconstitutional for the reasons addressed in the Second Cause of Action,

1 and Defendants’ claim that they are following State law does not provide license to
2 violate federal law. Defendants’ position serves as further indicia of intent to
3 discriminate as Defendants interpret Section 47605(c)(5)(G) to require.

- 4 i. In adopting the County Staff Report and conditional approval, Defendants’ action
5 towards BCS was based on Defendants’ contention that “the issue of Bullis serving all
6 students continues to be a concern that requires monitoring and ongoing work by
7 Bullis... Considering the current facts and circumstances as described in this staff
8 analysis,[SCCOE] Staff recommends that any renewal be for a period of five years,”
9 (Staff Report pp. 54) i.e., not seven years as is available to a high performing charter
10 school like BCS under Section 47605. Thus, Defendants have deprived BCS of the 7-
11 year term it should have received based solely upon race-based “balance”.
- 12 j. As indicated in transcripts across multiple SCCBOE meetings (See Attachments C and
13 D), it was clear that SCCBOE’s decision to impose conditions upon BCS was
14 predicated upon SCCOE’s contentions in the staff report that BCS’ racial makeup (too
15 few Hispanic students, i.e., because enrollment is predominantly Asian) is unacceptable
16 to Defendants. At the July 17, 2024 public hearing, SCCOE staff explained to the
17 SCCBOE that although Bullis “has stated that its student population more closely
18 reflects the demographics of Los Altos School District than the demographics of other
19 SCCOE authorized charter schools and their respective districts. The issue on Bullis’
20 renewal is *its own demographics*,” (emphasis added), i.e., demographics that are
21 predominantly Asian and less Hispanic, “not those of other charter schools,” i.e.,
22 charter schools that are predominantly Hispanic and less Asian. SCCOE explained that
23 this difference was acceptable because those other charter schools “include in their
24 mission service [of] historically underserved students... have larger populations of
25 historically underserved students, which is consistent with the charter schools acts
26 emphasis on equity, and access, and serving all students,” (July 17, 2024 transcript, pp.
27
28

1 6-7^s) i.e., and that because Bullis predominantly serves Asian students who SCCOE
2 does not deem a “historically disadvantaged” race, Bullis is to be treated differently.
3 The transcript remarks from SCCBOE Board members indicates that they agreed with
4 SCCOE staff’s position that Bullis is to be treated differently from other schools
5 because SCCOE does not consider the racial majority Bullis serves (Asian students) to
6 be “historically disadvantaged”:

- 7 i. Trustee Sreekrishnan: “Just to sort of frame um, my questions, you know, my
8 interpretation of charter school law is that um, it emphasizes an importance on
9 um, serving historically underserved students. Um, and uh, really expanding
10 educational choices and opportunities for those students.” (July 17, 2024
11 transcript, pp. 63-64.)
- 12 ii. Trustee Berta: “Bullis, you’re aware that this board issued the notice of concern
13 and a reaffirmation of that notice of concern,” i.e., criticizing Bullis’ lack of an
14 acceptable racial balance, and “I’m really interested in understanding, you
15 know, the changes that you’ve made or the process that you’ve gone through to
16 address the concerns as outlined in those letters.” (July 17, 2024 transcript, pp.
17 116-117.)
- 18 iii. Trustee Berta: “I think the concern for me is how [Bullis’ efforts] translates into
19 the results we’re seeing,” i.e., regarding population balance. “One of the things
20 that’s deeply concerning is that for this past school year, it was at 0% for
21 English language learners in uh, in TK and kinder who are Hispanic.” “I
22 appreciate the efforts, but at some point it also has to translate into the actual
23 students that are being served and-and how-how that’s perpetuating equity in
24 the entire community, right?” (July 17, 2024 transcript, pp. 120-121.)

- 25 k. As indicated in the transcript for the August 26-27, 2024 decision meeting, SCCOE
26 staff explained to the SCCBOE that “we ... found there is still a stati-statistically
27

28 [§] We note that the quality of the transcription was rough in places and in these quotation we have made minor edits to reflect what we believe to be the correct quote.

1 significant difference between Bullis and LASD in the proportion of students who are
2 Hispanic/Latino.” (August 26-27, 2024 transcript, p. 2.) Board members agreed that
3 Bullis was subject to adverse action because it had not met the population balance
4 expectations it had set, e.g., in prior letters to Bullis in May 2021 and August 2023:

5 iv. Trustee Berta: “Um, I have a question for our Charter School Department. Can
6 you help me understand the conditional approval as written if staff believes the
7 corresponding corrective action plan, which is in response to that notice of
8 concern, has been unsuccessful in addressing those concerns. If the concerns
9 haven't been addressed since that initial-- you know, the, the, the manner that
10 they've been addressed since 2021, uh, have not reached that level of
11 satisfaction. Can you help me understand what staff believes, uh, will change to
12 where they would agree to make that commitment now at this point in time?”
13 “Um, help me understand the conditional approval and why you're saying that
14 you believe this could work now with a conditional approval.” SCCOE staff
15 responded that “We feel like they, they can, uh, continue to work on the issue
16 and eventually, um, be reflective of the district,” i.e., in terms of racial balance.
17 Trustee Berta responded: “Okay. And so in terms of the types of changes that
18 would need to-- in terms of the success of the corrective action plan, and that
19 would be-- it would be reliant on Bullis's commitment to agree to those
20 conditions. Is that correct?” SCCOE staff responded: “That is correct.” (August
21 26-27, 2024 transcript, p. 31.)

22 v. Trustee Berta: “And so my concern continues to be that the data and evidence
23 outlined by the staff analysis clearly shows there's systemic issues... And these
24 issues are s-statistically significant. They're not things that have just been made
25 up. Um, there's disproportionality for some of our most vulnerable student
26 populations...So it's deeply concerning to see that there's a model that's not
27 fitting the types of diverse needs we know students have. And then going to
28 some of the points I think that Vice President made is the, the bigger issue here

1 that goes beyond politics, because it is political when a public school does not
2 serve all students who wish to attend.” (Exhibit D, August 26-27, 2024
3 transcript, p. 37.)

4 vi. Trustee Chon: “And it is very, um, concerning to hear, "We are serving all
5 students," and then they're not serving all students," i.e., based on the population
6 data presented by SCCOE staff. “And where are we supposed to go? So with a
7 lack of collaboration, I don't see improvement. And it is our responsibility to
8 ensure that all students are served at any charter school that we authorize. And
9 so I-- whatever the outcome is tonight, I do hope that, if there, um, are
10 conditions of approval, that we do work in order to stop this narrative...”
11 (August 26-27, 2024 transcript, p.36.)

12 vii. Trustee Mah: “So I make a motion that we approve the, um-- approve the
13 renewal for a time period of five years with, uh, no conditions, but kind of as a
14 side comment that we follow through with the, uh, you know, letter of concern,
15 process of revocation, if the regular processes of, um, **checking up on**
16 **demographics and as things change over time**, as we anticipate.” (August
17 26-27, 2024 transcript. p 58.) (Emphasis added.)

18 1. As indicated in the transcript from the decision meeting and the basis of the information
19 upon which SCCBOE acted, achievement of a racial balance to Defendants means
20 elimination of a “statistically significant” difference between BCS’ racial makeup and
21 LASD’s racial makeup, and thus provides a particular number (quota) to which BCS
22 would be required to meet to be deemed to have a racial balance acceptable to
23 Defendants. Then-Charter Schools Division Director Mefula Fairley stated that with
24 respect to the racial population makeup between BCS and LASD, “We're looking for
25 them to reflect. And so the way we look at, ‘Do they reflect?’ is, is there a signifi--
26 statistically significant difference in the proportion of students who attend Bullis and
27 LASD?” Trustee Grace Mah asked: “But, but to determine that, I mean, they're doing
28 an analysis, numerical ana-- they, they have some number that's a threshold,” to which

1 Directly Fairley responded, “Right.” (August 26-27, 2024 transcript, pp. 31-32.) This
2 exchange – which preceded SCCBOE’s action on BCS’ renewal petition – confirms
3 that Defendants did hold and intend to continue to hold BCS to a standard in oversight
4 under which BCS must achieve a particular threshold number for its racial subgroups in
5 order to be deemed in compliance with Defendants’ expectations, or at least, increase
6 enrollment of particular races for the sake of approaching a balance. The conditional
7 approval – and MOU – thus resulted from Defendants’ determination that BCS did not
8 achieve the numerical racial threshold set by Defendants.

- 9 m. Following the criticisms of Bullis, SCCBOE conditioned Bullis’ renewal on its
10 agreement to enter into an MOU that implemented SCCBOE’s requirement that Bullis
11 achieve a student population balance as indicated in the Staff Report and preceding
12 notices to cure.
- 13 n. The MOU expressly adopted, included, and was predicated upon the contentions within
14 the staff report, e.g., regarding BCS’ alleged failure to serve all students and eliminate
15 statistically significant differences in enrollment along the lines of the deliberations at
16 the August 26-27, 2024 meeting. The staff report and foregoing considerations by
17 SCCOE and SCCBOE Board members served as a cause for requiring BCS to enter
18 into the MOU and for its terms. As the transcripts indicate, while the MOU does not
19 use the term “quota,” the MOU reflected SCCBOE’s decision to require BCS to
20 achieve a racial balance to Defendants’ satisfaction and eliminate the alleged
21 statistically significant disparity. The MOU was required of BCS as a consequence for
22 not meeting the numerical “threshold” to eliminate “statistically significant” racial
23 population differences as addressed at the August 26-27, 2024 SCCBOE meeting
- 24 o. The MOU requires BCS to “increase its enrollment of what SCCOE contends are
25 historically underserved student groups.” As SCCOE explained, SCCOE contends that
26 Hispanic students are a historically underserved group, and that overrepresentation of
27 Asian students is unacceptable because Asians are not a historically underserved group
28 per SCCOE. In other words, the MOU requires BCS to increase enrollment of one

1 student group based on race, which requires the decrease of Asian students as a matter
2 of math and logic. It also mandates that BCS “include metrics for measuring the
3 success/effectiveness of the plan and its components,” i.e., whether BCS has actually
4 achieved the growth of racial groups deemed by SCCOE to be “historically
5 underserved.” Again, this term required by Defendants reflects their view that the
6 current racial population makeup at BCS is unacceptable because it includes the wrong
7 mix of races and that balance must be achieved for the sake of “balance”.

8 p. Defendants have refused to disclose the statistical analysis upon which they relied to
9 conclude that BCS is excluding students, including in response to a California Public
10 Records Act request. Defendants’ apparent position is that this information is attorney-
11 client privileged, which is surely baseless given that the information was relied upon by
12 SCCBOE in making a decision on BCS’ charter renewal petition. Concealing that
13 purported analysis serves as further indicia that SCCBOE’s actions as to BCS were
14 unlawful.

15 40. SCCBOE and SCCOE’s campaign has also been detrimental to BCS’ reputation and its
16 standing in the community where, e.g., SCCBOE and SCCOE have perpetuated a false myth that
17 BCS excludes students on the basis of race. Ironically, it is SCCBOE and SCCOE who demand that
18 BCS exclude students based on race—a demand that BCS refuses to follow. BCS has not excluded
19 anyone who wishes to attend the school.

20 41. BCS faces ongoing harm caused by Defendants because BCS is subject to an operative
21 MOU that was unlawfully imposed upon BCS as a condition of renewal. The MOU includes terms
22 that are oppressive to BCS; the requirement itself for BCS to enter into an MOU at all was oppressive
23 to BCS. The MOU and the expectations set by Defendants will cause BCS to incur expenses and
24 expend staff time that will impair BCS’ capacity to focus its resources and time on its students.
25 Education Code Sections 47607 and 47607.2 identify the exclusive legal grounds upon which a
26 charter renewal petition may be denied and does not permit denial based on failure to execute an
27 MOU. BCS would not have been subject to the MOU and its terms but-for Defendants’
28 discriminatory actions in violation of Title VI.

1 42. Defendants have not disclaimed that they will continue to require BCS to achieve a
2 racial balance that favors the increased enrollment of Hispanic students and that will cause a decrease
3 in Asian student enrollment, a disfavored racial group. Unless and until declaratory and injunctive
4 relief issues against SCCBOE and SCCOE’s practices, BCS stands to continue to be unlawfully
5 harassed and bullied by SCCBOE and SCCOE, including through the conditions SCCBOE imposed
6 through the MOU and required BCS to accept on the pain of nonrenewal and school closure.
7 Regardless of whether the MOU identifies an express racial quota that BCS must achieve, BCS
8 submits that injunctive and declaratory relief is seeks here to prevent ongoing harm is appropriate
9 based on (1) evidence that the requirement for the MOU itself was driven by Defendants’
10 discriminatory intent and demand that Defendants increase the enrollment of students based on race
11 to the detriment of students of a disfavored race; and (2) Defendants’ historical treatment of BCS for
12 allegedly racial imbalance, behavior which Defendants have not confirmed they will cease.

13 43. BCS also seeks compensatory damages from Defendants for the past harm BCS has
14 sustained related to and as a result of Defendants’ unlawful conduct and discrimination, including but
15 not limited to reputational harm caused to BCS, expenses related to attempting to satisfy Defendants’
16 demands, the value of staff time diverted to addressing Defendants’ unlawful conduct, and other
17 harms.

18 44. SCCBOE and SCCOE receive and rely upon federal funding for its operations. Thus,
19 SCCBOE and SCCOE receive federal financial assistance within the meaning of Title VI.

20 45. As a consequence of SCCBOE and SCCOE’s conduct in violation of Title VI, BCS is
21 entitled to declaratory and injunctive relief as described below.

22 **SECOND CAUSE OF ACTION**

23 **Violation of the 14th Amendment and the Equal Protection Clause of the U.S. Constitution**
24 **(Against All Defendants)**

25 46. Plaintiffs incorporate herein by reference each and every allegation contained in the
26 preceding paragraphs of this Complaint as though fully set forth herein.

27 47. Education Code Section 47605(c)(5)(G) provides that a charter petition may be denied
28 if it does not include a “reasonably comprehensive description” explaining, in relevant part, “[t]he

1 means by which the charter school will achieve a balance of racial and ethnic pupils ... that is
2 reflective of the general population residing within the territorial jurisdiction of the school district to
3 which the charter petition is submitted.”

4 48. Defendants contend that this provision requires that “BCS and every other charter
5 school must articulate, as a ‘condition of approval or renewal,’ what actions it will take to achieve a
6 student population balance that is reflective of the general population of the school district in which
7 the charter, and that “needless to say, every charter school including BCS can be expected to
8 *implement* what it articulates regarding this requirement, and that if implementation is not moving
9 toward *compliance* with the goal of a student population balance that is reflective of the general
10 population of the school district in which the charter school operates (i.e. ‘will achieve’), changes can
11 be expected to move toward achievement of that goal.” (Dtk. #16, Defendants’ Reply in Support of
12 Motion to Dismiss, pp. 5-6.) Defendants specifically contend that Bullis must “achieve a student
13 balance in accordance with Section 47605(c)(5)(G) in order to remediate these issues,” i.e., of racial
14 imbalance. (August 4,, 2023 Letter at p. 4.)

15 49. That is, under Defendants’ interpretation of Education Code Section 47605(c)(5)(G),
16 Plaintiff and other charter petitioners’ eligibility to secure a government benefit – an approved charter
17 petition – is premised on their agreement to promise to implement steps to “achieve” a racial balance
18 that “reflects” the population of the school district where the charter school is located based along the
19 lines of race. Specific to BCS, Defendants appear to contend that BCS is in violation of its charter
20 and the law because BCS does not “reflect” the student population at LASD as measured based on
21 race, given in particular that there is a statistically significant difference between the percentage of
22 Hispanic students enrolled at LASD and BCS, respectively.

23 50. Education Code Section 47605(c)(5)(G) is unconstitutional insofar as Defendants are
24 correct that it requires BCS and other charter schools to actually achieve a racial balance that reflects
25 proportions of students enrolled at the school district in which the charter school is authorized to
26 operate. As Defendants argue, this provision requires charter schools to take actions that are
27 specifically intended to increase the size of one population based on race, and charter schools may be
28 disciplined or face non-renewal when they do not “achieve” the “goal.”

1 51. Although Defendants appear to agree that BCS cannot literally screen or prefer students
2 in admission based on race, the gist of Defendants’ position appears to be that BCS must prefer
3 students based on race in the recruiting process by deliberately allocating resources and efforts to
4 attracting students of a certain race so that the applications from that racial group will drown out the
5 applications from other racial groups, resulting in an “achievement” of a population balance based on
6 race. Stated differently, Section 47605(c)(5)(G) would apparently require BCS to find and speak
7 loudly to students belonging to a particular racial group to encourage them to apply to BCS, but
8 require BCS to take no actions to engage in broad-based recruitment that could attract students
9 belonging to the “wrong” racial group. BCS must take efforts to ensure that applications from the
10 *right* applicants drown out applications from the *wrong* applicants – again, based on race. And, if
11 BCS does not actually achieve the racial balance, it is subject to adverse treatment by Defendants on
12 the basis BCS’ efforts have resulted in *not* achieving the racial balance that Defendants require and
13 claim that Section 47605(c)(5)(G) requires.

14 52. This approach to assessing students’ contribution to or detraction from a population
15 balance under the lens of race and preferring students based on race – even if only in the recruitment
16 process rather than directly in the admission process – is unconstitutional. It requires charter schools
17 to favor and disfavor students based on an inherently suspect class, race, and this kind of racial
18 classification does not withstand strict scrutiny.

19 53. The Equal Protection Clause of the Fourteenth Amendment to the United States
20 Constitution provides that no State shall “deny to any person within its jurisdiction the equal
21 protection of the laws.” Any government action that classifies individuals based on race is
22 immediately suspect and must be analyzed by a reviewing court under strict scrutiny. To survive this
23 demanding standard, the Defendants must prove that the racial classification is narrowly tailored to
24 achieve a compelling government interest.

25 54. The requirement that a charter school “achieve a balance of racial and ethnic pupils”
26 that is “reflective of the general population” is not a compelling government interest. The Supreme
27 Court has repeatedly and unequivocally held that racial balancing for its own sake is unconstitutional.
28 In *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 732 (2007),

1 the Court invalidated student assignment plans that used race to maintain a desired racial balance,
2 stating that “racial balancing is not transformed from ‘patently unconstitutional’ to a compelling state
3 interest simply by relabeling it ‘racial diversity.’” The interest articulated by Defendants—requiring
4 charter schools to meet a numerical goal that mirrors the district’s racial demographics—is precisely
5 the kind of racial balancing the Constitution forbids.

6 55. The Supreme Court’s recent decision in *Students for Fair Admissions, Inc. v. President*
7 *and Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*), further reinforces this principle. The
8 Court held that university admissions programs could not use race as a factor to achieve a diverse
9 student body, in part because the goals pursued, e.g., to mirror societal demographics, were “not
10 sufficiently coherent for purposes of strict scrutiny.” The goal required by Section 47605(c)(5)(G)—
11 to “achieve” a racial balance that “reflects” the district—is just as indeterminate as the goals rejected
12 in *SFFA*. It amounts to an unconstitutional quota system, where a school’s success or failure is
13 measured by its ability to hit a target racial percentage.

14 56. Even if achieving such a racial balance were a compelling interest, the means employed
15 by the statute are not narrowly tailored. A narrowly tailored policy must, among other things, show a
16 serious, good-faith consideration of workable race-neutral alternatives. Here, the statute and
17 Defendants’ interpretation of it demands a race-based approach. Charter schools are not merely
18 permitted to consider race-neutral strategies; they are judged on their ability to produce a specific
19 racial outcome. This statutory scheme forces schools to view prospective students not as individuals,
20 but as members of a racial group who either contribute to or detract from the state-mandated racial
21 quota (or as Defendants impose, a lack of statistically significant difference.).

22 57. By conditioning the approval and renewal of a charter petition on a school’s promise to
23 engage in race-based recruitment and achieve a predetermined racial composition, this has created an
24 unconstitutional framework. It places charter schools in an impossible position: either violate the
25 Equal Protection Clause by discriminating on the basis of race to achieve the desired balance, or face
26 denial, non-renewal, or other disciplinary action from chartering authorities for failing to do so. The
27 statute, as interpreted and applied by Defendants, is a direct command to engage in the very racial
28 discrimination the Fourteenth Amendment was enacted to prohibit.

1 58. Defendants’ decision to conditionally renew BCS’ charter petition and subject BCS to
2 an oppressive MOU was premised, at least in part, on Defendants’ interpretation and attempt to
3 implement Section 47605(c)(5)(G), which is improper for the foregoing reasons.

4 59. Absent declaratory and injunctive relief deeming Section 47605(c)(5)(G)
5 unconstitutional, Defendants will continue to insist that Plaintiff achieve the racial balance described
6 in that provision, and subject Plaintiff to adverse consequences where Plaintiff does not “achieve” the
7 “goal” that Defendants contend to be required.

8 60. As a consequence, BCS is entitled to declaratory and injunctive relief as described
9 below.

10 **THIRD CAUSE OF ACTION**

11 **Violation of the 14th Amendment and the Equal Protection Clause of the U.S. Constitution**
12 **(Against All Defendants)**

13 61. Plaintiffs incorporate herein by reference each and every allegation contained in the
14 preceding paragraphs of this Complaint as though fully set forth herein.

15 62. The Equal Protection Clause of the Fourteenth Amendment to the United States
16 Constitution provides that no State shall “deny to any person within its jurisdiction the equal
17 protection of the laws.” “[W]hen a policy is motivated by an intent to discriminate against persons of
18 a particular race, and plaintiffs who belong to that race have suffered harm as a result, the Equal
19 Protection Clause provides for strict scrutiny review of that policy.” (*Chinese Am. Citizens All. of*
20 *Greater New York v. Adams*, 116 F.4th 161, 171 (2d Cir. 2024).)

21 63. As alleged above, Defendants have in effect and practice maintained a policy and
22 engaged in conduct where Defendants have required that BCS achieve an increase in its Hispanic
23 student population motivated by Defendants’ view that Asian students have been overrepresented and
24 should be reduced to make way for Hispanic students. As addressed above, Defendants apply this
25 race balancing policy to BCS, where Hispanic students are alleged to be underrepresented, but do not
26 apply the same race balancing policy to other charter schools where Hispanic students are by the
27 same logic overrepresented (based on Defendants’ statistical arguments) and where Asian students
28 are underrepresented.

1 64. The only practical way that BCS can meet Defendants’ racial balancing standard to
2 eliminate statistical disparities is by engaging in deliberate recruitment that is designed to crowd out
3 applications from Asian students and to make it less likely that an Asian applicant will achieve
4 admission. Given that BCS consistently receives far more applications than for which it has space,
5 admission to BCS is subject to a random public drawing. BCS does not (and cannot and will not)
6 prefer students in the lottery based on race, and so, the only way that BCS could improve the odds of
7 an Hispanic student being selected over an Asian student to fill a spot (without unlawfully dissuading
8 Asian students from applying) is by recruiting substantially more Hispanic students to make it less
9 likely that an Asian student’s name will be drawn from the lottery. This approach is necessarily
10 discriminatory in its intent and goes beyond fair efforts to recruit a diverse student body through
11 broad marketing efforts. But, where Defendants have penalized BCS for not achieving a particular
12 racial balance (as they have done as described above), the approach described in this paragraph is
13 what Defendants’ policy effectively requires.

14 65. Defendants’ policy and conduct has a disparate impact on Asian students that seek to
15 attend BCS, and for whom BCS has a legal and ethical responsibility to ensure that they do not face
16 discrimination in BCS’ admission practices – the same for all students.

17 66. Defendants’ policy and conduct also harms BCS’ student body which is predominantly
18 comprised of Asian students because it subjects these students’ school to ongoing attacks from
19 Defendants that are expensive to defend against (taking funds away from the student program) and
20 that distract school staff from core educational programming (taking focus away from students).
21 Defendants’ policy and conduct also subjects BCS to the heightened threat of charter revocation and
22 school closure for failure to meet Defendants’ expectations as described at the SCCBOE board
23 meetings, thus destabilizing BCS on the basis of race-based considerations, i.e., that BCS has the
24 wrong racial balance. Because Asian students are the predominate student group at BCS, Defendants
25 conduct is disparately and uniquely harmful to Asian students at BCS as compared to other charter
26 schools that Defendants do not subject to the same policy and conduct.

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they demonstrate and result from unlawful racial discrimination by SCCBOE.

- 2. That the Court permanently enjoin Defendants from the following conduct:
 - a. That Defendants are enjoined from enforcing the conditions imposed by SCCBOE upon BCS at renewal, including with respect to the MOU condition.
 - b. That Defendants are enjoined from adverse treatment of BCS on the basis that BCS has not attained the student population balance desired by Defendants.
 - c. That Defendants are enjoined from requiring that BCS attain any particular or approximate student population balance.
 - d. That Defendants are enjoined from harassing BCS on the basis that it has not attained any particular or approximate student population balance.
- 3. Compensatory damages for harm to BCS as a result of Defendants’ unlawful conduct.
- 4. Attorney’s fees and costs.
- 5. Award any additional relief the Court deems just and proper.

Dated: August 1, 2025

YOUNG, MINNEY & CORR, LLP

By: /s/ John Lemmo
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