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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO

Capital Christian Center and Capital Christian School,

Plaintiffs,

vs.

California Interscholastic Federation; California Interscholastic Federation, Sac-Joaquin Section Executive Committee; Michael S. Garrison, Commissioner of California Interscholastic Federation, Sac-Joaquin Section; and Kevin Swartwood, President of California Interscholastic Federation, Sac-Joaquin Section Executive Committee,

Defendants.

Case No. 2:22-cv-00721-JAM-KJN

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Assigned to: Judge John A. Mendez

Date: July 12, 2022
Time: 1:30 p.m.
Place: United States District Court, Eastern District of California, 501 I Street, Courtroom 6, 14th floor, Sacramento, California 95814

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In early 2021, as the COVID-19 pandemic entered its second year and California schools remained largely shuttered, parents, coaches, and student-athletes across the State turned to club leagues to provide the physical, educational, and emotional benefits of organized sports. Students and coaches from Capital Christian High School,[1] along with students and coaches from many other public and private schools in Northern California, participated in the newly-formed California Association of Private Sports club football league ("CAPS"). CAPS was purposefully organized on a community-based model, with each team comprising players and coaches from a number of different high schools. As Defendants now admit, as a private organization, CAPS fell outside Defendants' jurisdiction. When CAPS was launched, there was no state-sanctioned high school football season. Its season was, however, short-lived as the California Interscholastic Federation Sac-Joaquin Section ("CIF-SJS") subsequently initiated a short spring high school football season.

Notwithstanding their lack of jurisdiction and the lack of a high school football season, Defendants began investigating. Defendants ultimately identified at least nine schools whose players and coaches were strongly associated with particular CAPS teams. Yet, in June 2021, CIF-SJS announced sanctions only four high schools, all private Christian schools, for purportedly participating in illegal football games. In announcing their selective enforcement, Defendants manufactured standards for treating some but not other club teams as a high school team's *alter ego*. These standards were nothing more than pretextual bases to avoid sanctioning other schools who had similarly participated in CAPS. Their intended result was to place the burden of CAPS participation solely, unequally, and unfairly on the sanctioned Christian schools.

Defendants now seek dismissal of the Complaint, but their Motion fails several times over. First, rather than accept Plaintiffs' well-pleaded allegations as required under Rule 12(b)(6), Defendants instead repeatedly ignore, if not contradict, the Complaint. Defendants go further astray by invoking Rule 12(b)(2)—which governs jurisdictional disputes—to import extra-Complaint materials including Defendant Garrison's self-serving declaration filed in a different action.

Second, Defendants' Motion fundamentally misunderstands Plaintiffs' legal claims. Defendants attempt to frame the case as challenging state and local stay-at-home orders, the suspension of

[1] Capital Christian High School is owned and operated by Plaintiffs Capital Christian Center and Capital Christian School (collectively, "Plaintiffs" or "CCHS").

interscholastic high school sports, or Defendants' by-laws. Not so. Rather, the Complaint challenges the selective manner in which these rules were applied to single out Christian high schools for discriminatory treatment. State and local COVID orders and the suspension of high school sports related to the playing of sports, not the leasing of facilities, the use of social media, and so forth. If those rules were violated, as Defendants maintain, they should be applied equally to all violators. And, as pled and discussed further herein, the pretextual bases Defendants announced to pick and choose which club teams would be treated as school teams and which would not, lack any basis in law or logic or, in some instances, fact. The state may not manufacture distinctions without a difference to justify discriminatory treatment. Here, because Defendants singled out four schools for unequal and selective treatment, they violated Plaintiffs' right to equal protection. And because they selectively burdened four religious schools by treating them less favorably than similarly situated secular schools, Defendants burdened Plaintiffs' right to free exercise.

The underlying facts will no doubt be subject to vigorous discovery, and Defendants will maintain that they did not discriminate on an improper basis. At this point, however, the only question is whether Plaintiffs have sufficiently pled their causes of action. Clearly, we have. The Court should resist Defendants' invitation to ignore or look outside the Complaint, and based on the well pleaded allegations in the Complaint should deny the Motion.

BACKGROUND

1. CIF and CIF-SJS Regulate *Interscholastic* Athletics.

California high school athletics operate under the supervision of a statewide governing body—the California Interscholastic Federation ("CIF"). Compl. ¶20. Recognizing CIF as an organization "with responsibility for administering *interscholastic* activities in *secondary schools,*" California law requires that CIF, in consultation with the Department of Education, implement certain policies related to interscholastic sports in secondary schools. Cal Educ. Code § 33353 (emphasis added); *see also* Compl. ¶¶20–21. CIF is further divided into ten semi-autonomous, independently organized "Sections," which oversee specified geographic regions of the State. Compl. ¶22. The CIF Sac-Joaquin Section governs high school athletics in the Northern San Joaquin Valley. *Id.* ¶23. CIF-SJS, in turn, functions through its Executive Committee, which includes Commissioner Michael Garrison and President Kevin Swartwood. Although membership in the CIF is voluntary, a secondary school in California effectively must join the CIF to offer its students

the opportunity to compete in competitive athletics as no meaningful alternatives exist. *Id.* ¶32.

CIF and CIF-SJS extensively regulate member school activities. Their bylaws cover an array of topics, some applicable across all sports and some sport-specific. *Id.* For example, CIF-SJS bylaws regulate academic eligibility, age and residency requirements, and student-athlete eligibility following interschool transfers. *Id.* High school football programs participating in CIF-sponsored competitions must abide by detailed rules, including those regulating offseason conditioning, permissible practice activities, game scheduling, and season dates. *Id.* ¶35. But neither purports to regulate non-member organizations. *Id.*

Student-athletes hoping to compete collegiately or professionally increasingly seek out opportunities for year-round competition. *Id.* ¶39. Because high school athletics usually offer only a single season per sport, independent club organizations fill the void. *Id.* CIF and its Sections lack direct authority over these independent entities *Id.* Rather, they regulate club team participation indirectly through their authority to regulate participation in CIF-sponsored interscholastic sports. Specifically, CIF bylaws deem a student-athlete ineligible for interscholastic competition if he or she has competed in the same sport in an independently organized league during the same season designated for interscholastic competition in that sport. *Id.* ¶43. Notably, this rule applies to individual athletes, not to schools.

Although club teams draw students from multiple high schools, clubs unsurprisingly often contain a critical mass of students from a single high school. *Id.* ¶41. Coaches similarly may coach on high school and club teams, and may also coach the same athletes in both. *Id.* ¶45. CIF-SJS bylaws anticipate and implicitly *permit* such close ties. *See id.* Indeed, the Bylaws provide that a "team associated with a school" includes those "organized by and/or coached by any member of the [high school] coaching staff" and those "on which the majority of the members of the team . . . are students who attend that school." *Id.* Yet CIF-SJS Bylaws recognize that such teams are nevertheless deemed "non-school athletic team[s]." *Id.*

2. **The COVID-19 Pandemic Suspends Interscholastic Athletic Competition.**

In March 2020, the COVID-19 pandemic drove Californians indoors, and subsequent state and local public health orders effectively suspended high school sports. Compl. ¶48. As the pandemic entered its second year, it appeared that there would be no high school football season for 2020-2021. *Id.* ¶¶48–49. With increasing awareness of the physical, mental, and emotional toll the public health response was having on student athletes, parents and coaches began to explore a club football league organized

independent of CIF-SJS. *Id.* ¶¶50–52. Ultimately, they formed a 501(c)(3) organization, CAPS. *Id.* ¶54. Phil Grams, the head football coach of Ripon Christian School, served as league president. *Id.*

CAPS organizers took care to establish the league consistent with CIF-SJS's bylaws and jurisdiction. *Id.* ¶53. Teams were to be based on community affiliation rather than high school enrollment. *Id.* ¶55. Teams formed, signed up, paid fees, executed waivers, and secured insurance independent of their players' and coaches' high school affiliations. *Id.* The league used its financial resources from all of its member teams to lease playing facilities to be used by all of its member teams. *Id.* ¶¶61–64. CAPS launched with eleven charter members competing across two age divisions: 16-and-under, and 19-and-under. *Id.* ¶57. This structure again reflects club sports, which are based on age rather than school class years. *Id.* ¶57.

As intended by the community approach, individual team rosters included players from multiple public and private schools. *Id.* ¶¶55–56, 58. Unsurprisingly, however, classmates from area high schools tended to congregate on the same team. *Id.* ¶59. Relevant here, the Cap City Cougars fielded teams with a majority of students from CCHS along with a handful of CCHS coaches and parents. *Id.*. But a strong plurality of Cap City's players attended other area high schools and most of its coaches were not CCHS employees. *Id.* Other CAPS teams had similar, if not more substantial, associations with individual schools. *Id.* ¶60. Players on "the Misfits" hailed almost entirely from two Sacramento-area public high schools: Grant Union High School ("Grant"), and Elk Grove High School. *Id.* And several members of the Misfits' coaching staff also coached Grant's high school team. Similarly, the Wild Dawgs comprised mostly Hughson High School students, who were coached by Hughson's head coach. *Id.*

Over the course of four weeks in February and March 2021, CAPS hosted games at sites leased by the league from the Church, Ripon Christian, Stone Ridge Christian, and Vacaville Christian. *Id.* ¶¶63–64. Ten teams played in CAPS games, including the Grant/Elk Grove team, the Misfits, and Hughson High's Wild Dawgs. *Id.* ¶¶66–68. However, the league season was abandoned when it appeared that the CIF-SJS would permit a spring football season. *Id.* ¶68.

3. **Defendants Selectively Target CCHS for Investigation and Punishment.**

Before a single CAPS game was played, Garrison formed the firm conviction that the Cap City team was an *alter ego* for the CCHS football program. Four days before the scheduled first game, Garrison demanded that CCHS turn over team rosters, lease agreements, and any documentation relating to the

assumed relationship between CCHS and Cap City. *Id.* ¶70. CCHS attempted to explain the distinction between the club and the school, and repeatedly asked Garrison to identify any CIF or CIF-SJS bylaw at issue. On the night of the first CAPS games, he lingered in an adjacent elementary school parking lot, viewing the games from a distance. *Id.* ¶73.

Nearly four months later, after a short CIF-SJS-sponsored spring football season, Garrison announced that the CIF-SJS Executive Committee would consider whether CCHS had violated CIF-SJS bylaws via Cap City's participation in CAPS. *Id.* ¶86. With less than a day's notice, CCHS prepared a response to correct factual errors contained in Garrison's proposed presentation. *Id.* ¶89. When the Executive Committee met the next day, however, CCHS was afforded no formal opportunity to rebut the allegations; instead, Wong was permitted to speak only as part of a short, public comment session. *Id.* ¶90. The Executive Committee then retreated into a closed session to discuss the allegations. *Id.*

On July 29, CIF-SJS imposed sanctions on CCHS including a two-season postseason ban and three year probationary period for the football program, and a one-year probationary period for the school's athletic program generally. *Id.* ¶¶91–92. The decision charged CCHS with violating various CIF-SJS bylaws:

- Article 2, Section 22 of the CIF Constitution, which requires as a condition of membership that CIF members abide by the CIF's rules:
- CIF-SJS Bylaw 105, which permits CIF to suspend the membership of schools that willfully refuse to comply with CIF rules;
- CIF-SJS Bylaw 504.L, which limits students to a single season of a sport per academic year; and,
- CIF-SJS Bylaw 502, which prohibits a member school's team from competing against a non-CIF member.

Essential to each of these determinations was the Executive Committee's determination that the Cap City team was in fact the CCHS high school football team. Neither CIF nor CIF-SJS bylaws establishes when a club team will be treated as a school team. To the contrary, CIF-SJS's bylaws state that a club team "organized by and/or coached by any member of [a high school] coaching staff" or "on which the majority of the members of the team . . . are students who attend [a high school]" shall nonetheless be deemed a "non-school athletic teams." Bylaw 510.E(1). The Executive Committee nonetheless decided to treat Cap City as the CCHS team because of the overlapping rosters and coaching staffs. Compl. ¶91. The decision also cited the facility and equipment lease agreements between CAPS, Caps City, and CCHS

and the presence of an inflatable mascot and cheerleaders. *Id.* That same day, CIF-SJS announced its sanctions against CCHS and three other Christian schools. *Id.* ¶94. In its press release, CIF-SJS not only condemned these schools, but also emphasized the innocence of every CIF-SJS program, including those public schools whose players and coaches had similarly participated in CAPS. *Id.* ¶¶94–95. To date, Defendants have imposed no sanctions on any other CAPS participants.

LEGAL STANDARD

A Rule 12(b)(6) motion tests the legal sufficiency of a complaint. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). Dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." *In re Am. Apparel, Inc. S'holder Litig.*, 855 F. Supp. 2d 1043 (C.D. Cal. 2012) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988)). A claim is plausible when the plaintiff pleads facts that "allow[] the court to draw the reasonable inference that the defendant is liable." *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009).

In adjudicating a motion brought under Rule 12(b)(6), factual allegations set forth in the complaint "are taken as true and construed in the light most favorable to [p]laintiffs." *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996). Moreover, "[r]eview is limited to the complaint." *Cervantes v. City of San Diego*, 5 F.3d 1273, 1274 (9th Cir. 1993). Unlike a motion brought under Rules 12(b)(1) or (b)(2), which permit the Court to look beyond the Complaint, a Rule 12(b)(6) motion does not. *See WildEarth Guardians v. U.S. Forest Serv.*, 2020 WL 7647630, at *5-6 (D. Idaho Dec. 23, 2020). Thus, "[a]s a general rule, a district court may not consider any material beyond the pleadings." *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001) (internal quotation marks omitted).

ARGUMENT

I. The Court Should Disregard Defendants' Extra-Complaint Factual Submissions.

In support of their Motion, Defendants attach a Request for Judicial Notice ("RJN"), asking the Court to consider 16 exhibits, some of which attach dozens more documents. The RJN includes some unobjectionable materials, such as public health orders. It also includes, however, state court filings, which Defendants offer to establish the truth of disputed facts. While the Motion cites the Complaint only in passing, it relies extensively on the RJN. *See* Defs' Mem. of Points & Authorities ("Mot.") at 2-8, ECF 21-1. Notably, Defendants cite Garrison's self-serving declaration more than 10 times to establish the truth

of "facts" that contravene allegations in the Complaint and that will be hotly contested. Consideration of such materials on a Rule 12(b)(6) motion is grossly improper.

Citing *NuCal Foods, Inc. v. Quality Egg LLC*, 887 F. Supp. 2d 977 (E.D. Cal. 2012), Defendants argue that the Court may "consider[] documents filed in other court[s] by parties to the litigation including the representations made therein by the party." Mot. 9. That is incorrect. *NuCal* concerned motions to dismiss for lack of personal jurisdiction brought under Rule 12(b)(2). It is well established that on motions under Rules 12(b)(1) or (b)(2) a court may look beyond the complaint in order to discern facts relevant to its jurisdiction. That standard, however, has no relevance to Defendants' Motion filed under Rule 12(b)(6).

For a Rule 12(b)(6) motion, the Court generally should not consider materials outside of the pleadings unless the extrinsic documents are incorporated into the Complaint by reference or are matters of which a court may take judicial notice. *Orellana v. Mayorkas*, 6 F.4th 1034, 1042–43 (9th Cir. 2021). None of Defendants' documents is "integral" to the Complaint, so none should be considered on that basis. *Coto Settlement v. Eisenberg*, 593 F.3d 1031, 1038 (9th Cir. 2010) (a document is not incorporated into a complaint by mere mention, only when the Complain "necessarily relies upon a document"); *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003) (declining to incorporate documents offered in support of a motion to dismiss because "none of the attached documents formed the basis of [plaintiff's] complaint").

Alternatively, pursuant to Federal Rule of Evidence 201, "a court may take judicial notice of matters of public record." *Lee*, 250 F.3d at 689 (internal quotation marks omitted). But it "may not take judicial notice of a fact that is 'subject to reasonable dispute.'" *Id.* (quoting Fed. R. Evid. 201(b)). So, for example, a court may take judicial notice "that a judicial proceeding occurred or that a document was filed in another case, but a court may not take judicial notice of findings of fact from another case." *Hurd v. Garcia*, 454 F. Supp. 2d 1032, 1055 (S.D. Cal. 2006).

Here, some of Defendants' documents are appropriately considered under FRE 201. Plaintiffs have no objection to consideration of the state and local public health orders included as Documents 11–16, which are referenced in the Complaint and supply uncontested background. The balance of Plaintiffs' submission, however, is highly objectionable. Documents 1–10 are all lifted from the docket of Plaintiffs' voluntarily dismissed state court action, *Capital Christian Center v. California Interscholastic Federation Sac-Joaquin Section, et al.*, Case No. 34-2021-89993797 (Superior Court of California, Sacramento). Judicial

notice of prior judicial proceedings is limited in this Circuit to "the existence of the opinion, which is not subject to reasonable dispute over its authenticity," and not "for the truth of the facts recited therein." *Lee*, 250 F.3d at 690 (internal quotation omitted).

Although the Court can take judicial notice of the *existence* of a prior court action or its filings, Defendants go further, urging the Court to rely improperly on these documents to determine facts in dispute. For example, Defendants ask the Court to take judicial notice of the competing declarations of Timothy Wong and by Michael Garrison. *Compare* RJN at 2:25–3:2 (Wong Declaration); *id.* at 2:8–12 (Garrison Declaration). Those declarations contain contested interpretation of the facts giving rise to this action, and do not satisfy FRE 201's requirements. Fed. R. Evid. 201(b). Defendants cite Mr. Garrison's declaration at least 10 times as dispositive evidence of disputed facts including *inter alia* correspondence between himself and CCHS, his eyewitness perceptions of football games from an adjacent parking lot some distance away, the construction and application of CIF-SJS's bylaws, and that the CCHS team, as opposed to Cap City, played in CAPS games. Mot. 4-7; *Compare, e.g.*, Compl. ¶59 (identifying percentage of Cap City student roster and coaching staff affiliated with CCHS), *with* Garrison Decl. ¶24 (same, but reaching different percentages). All of this will be subject to vigorous discovery, and is inappropriate for consideration on a Rule 12(b)(6) motion to dismiss. The Court should reject Defendants' invocation of extraneous materials.

II. The Complaint States a Claim for Relief Against Defendants.

Turning to the merits, the Complaint properly pleads claims for violations of Plaintiffs' First and Fourteenth Amendment rights. As pled, Defendants drew a circle around CCHS and three other Christian schools, investigated them, and sanctioned them for participation in purportedly interscholastic illegal football games, and developed novel and pretextual standards to avoid punishing similarly situated non-Christian schools. Defendants urge dismissal on two bases. First, Defendants attack Plaintiffs' Equal Protection claims on the grounds that Plaintiffs have not identified precisely identical schools that were not punished. Second, Defendants attack Plaintiffs' Free Exercise claims on the basis that CCHS does not identify a "law" that is discriminatory on its face. Both claims misapprehend the relevant law and facts.

1. **Defendants' Disparate Investigation and Sanctioning of Christian Schools Violated Plaintiffs' Equal Protection Clause Rights.**

As pled in the Complaint, Defendants violated Plaintiffs' equal protection rights in two related ways. First, Defendants' conducted a selective investigation despite knowledge of similar conduct by others. Second, Defendants violated the Equal Protection Clause by sanctioning Christian schools while failing to sanction similarly situated schools. CCHS has sufficiently alleged facts to support both claims.

The Fourteenth Amendment requires that the states treat "all persons similarly situated . . . alike." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). To state a claim for a violation of the Equal Protection Clause, "a plaintiff must show that the defendants acted with an intent or purpose to discriminate . . . based upon membership in a protected class." *Thornton v. City of St. Helens*, 425 F.3d 1158, 1166 (9th Cir. 2005) (quotation omitted). Similarly, a selective enforcement claim requires a plaintiff to allege that enforcement of a regulation had a discriminatory effect and that the defendant was motivated by a discriminatory purpose. *Lacey v. Maricopa County*, 693 F.3d 896, 920 (9th Cir. 2012). "Discriminatory effect requires a showing that others similarly situated, who could have been [punished], were not." *Id.* A discriminatory purpose requires the plaintiff plead that the defendant "took a particular course of action at least in part because of . . . its adverse effects upon" a protected class. *Lee*, 250 F.3d at 687.

Plaintiffs' allegations readily establish the discriminatory effects upon CCHS resulting from Defendants' investigation and sanctions. As Plaintiffs have alleged, Defendants investigated and punished CCHS for its purported participation in CAPS. Compl. ¶¶90–93. Although teams in the league were composed of coaches and players from private and public schools alike, *Id.* ¶107, Defendants selectively investigated CCHS, accused it of wrongdoing, and imposed a series of harsh sanctions. *Id.* ¶¶107–09. However, several secular schools escaped investigation and punishment despite participating in a manner at least equivalent to CCHS' student-athletes. Players on "the Misfits" hailed almost entirely from two Sacramento-area public high schools: Grant and Elk Grove. *Id.* ¶60. And the Misfits' coaching staff hailed largely from Grant. So too did the Wild Dawgs consist principally of Hughson High School students, who were coached by Hughson's head coach. *Id.* As pled, Defendants' investigation of these other schools was unequal at best; entirely lacking at worst. *Id.* ¶¶81, 94-96, 108-12. For example, there is no evidence that Defendant Garrison ever investigated Elk Grove's participation with the Misfits team at all. *Id.* ¶60. These public high schools not only escaped punishment, but were in fact hailed by Defendants as being among those schools that "followed the applicable mandates" during the pandemic. Mot. 1. As a result, CCHS

and its student athletes and coaches have missed one year of post-season football, stand to miss another, remain under "probation, and bear daily the ill-odor of having been singled out and adjudged as cheaters, in contravention of their religious mission and moral code. Compl. ¶¶102–04.

In response, Defendants argue that these claims should be dismissed because CCHS fails to identify "any public school that fielded a club football team comprised primarily of its own players and coaches, utilizing school football helmets, pads and uniforms, school sideline equipment like blocking sleds or an inflatable mascot to run out of, the school's stadium, locker room, and bathrooms, and school cheerleaders using their school uniforms."[2] Mot. 10. In other words, Defendants contend that Plaintiffs have failed to identify another school *identical* in all respects, including all the purported grounds of distinction Defendants manufactured to justify its discriminatory conduct. This argument is incorrect.

First, Defendants' argument relies on "facts" they improperly import into the record on this Rule 12(b)(6) motion to dismiss. Mot. 10-11. The ancillary facts Defendants point to find no purchase in the Complaint. And moreover, these "facts" will be hotly contested in discovery and subsequent motions practice.[3] For all the reasons discussed in Section I, *supra*, these "facts" should be put aside. Once the Motion is pared down to the Complaint's allegations, Defendants have no remaining basis for dismissal.

Second, Defendants' argument elides the actual basis for their conduct, as pled in the Complaint. As Defendants would have it, the involvement of CCHS players and coaches in CAPS was a mere footnote in Defendants' decision-making process. Not so. The touchstone of Defendants' conduct was the playing and coaching of football. The public health orders and guidance Defendants now invoke concerned the *playing* of contact sports, not the leasing of stadiums, posting of videos, or any other incidental circumstances to which Defendants now point. *See, e.g.*, RJN Ex. 14 (COVID-19 guidance for sports). If CCHS students had not played, and CCHS coaches had not coached, on the Cap City team in CAPS, we would not be here today regardless of whether the Church leased out its field or equipment, or whether

[2] Defendants offer no argument as to *why* these facts are relevant for purposes of Plaintiffs' claim or at the correct level of generality for the court's review. Defendants have thus waived any such argument.
[3] For example, Defendants allege that their decision was based, in part, on the presence of CCHS cheerleaders in CCHS uniforms at the games. The photographs that purportedly document their presence were taken potentially hundreds of yards away, through bushes and a chain link fence, and do not support any of Defendants' allegations. Even if appropriate for consideration, Defendants prove only the presence of cheerleaders. That they are CCHS cheerleaders is merely a circular conclusion that follows from the perception that Cap City *was* CCHS.

someone ran through an inflatable cougar head with its CCHS markings covered over. Playing and coaching is what got CCHS sanctioned; many other schools' students and coaches similarly played and coached and they were not sanctioned. Compl. ¶¶57-60, 91-96, 99, 107-112, 119-120.

Third, and in any event, Defendants' theory is not the law. To state a claim for relief, a plaintiff need not "point to another class consisting of *identically* situated persons, just 'similarly' situated persons." *B.S. v. L.A. Unified Sch. Dist.*, 2015 WL 13914891, at *4 (C.D. Cal. Oct. 13, 2015); *see also Harvard v. Cesnalis*, 973 F.3d 190, 206 (3d Cir. 2020) ("'similarly situated' does not mean 'identically situated'"). "[W]hether parties are similarly situated is a fact-bound inquiry" reserved for the jury. *Warkentine v. Soria*, 152 F. Supp. 3d 1269, 1295 (E.D. Cal. 2016). Thus, at the pleading stage, Plaintiffs allegations must permit the Court "looking objectively at the incidents, [to] think them roughly equivalent and the protagonists similarly situated." *Barrington Cove Ltd. P'ship v. R.I. Housing & Mortg. Fin. Corp.*, 246 F.3d 1, 8 (1st Cir. 2001). Were the law otherwise, no equal protection claim would succeed, because a Defendant could always point to its pretextual excuse for its conduct and argue at the pleading stage that it puts the plaintiff and others in different classes. That is not how the law of equal protection works.

Lastly, Plaintiffs have amply pled that Defendants' purported justifications for their conduct—the distinctions they now invoke as grounds for dismissal—were at best pretextual. When the government's pretextual justifications for its discriminatory actions "ring hollow," that itself is "circumstantial evidence of a discriminatory intent." *Cottonwood Christian Ctr. v. Cypress Redev. Agency*, 218 F. Supp. 2d 1203, 1225 (C.D. Cal. 2002); *see also Marshall v. Corbett*, 2019 WL 4741761, at *12 (M.D. Pa. Aug. 8, 2019) (rejecting government's pretextual justifications for discriminatory policy because they "ring[] hollow"). Here, Defendants actions are riddled with pretextual justifications. First, Defendants argue that the overlap between the Cap City and CCHS football rosters and coaching staffs shows that they were *alter egos*. Mot. 10. Yet, CIF-SJS bylaws expressly contemplate that non-school teams may be "organized by and/or coached by any member of the [high school] coaching staff" and that a "majority of the members of the team [may be] students who attend that school," but that such teams are nevertheless deemed "non-school athletic team[s]." Compl. ¶45. Defendants point to the fact that CCHS leased its facilities to CAPS, and its equipment to the Cap City team. Mot. 4, 10. But as pled in the Complaint, club teams have long leased facilities and equipment from public and private schools without Defendants transmogrifying them into

scholastic teams. Compl. ¶¶15, 42, 61-65. Defendants now recast their conduct as enforcing COVID-19 rules, enforcing rules that member teams abide by CIF mandates, and do not gain an "unfair advantage" by practicing or playing illegally. Mot. 6. But if these were Defendants' actual motivations, they would have investigated and sanctioned all schools whose players and coaches participated in CAPS, because playing and coaching are the *only* complained-of activities that are relevant to these cited rules and regulations. A team of student-athletes and coaches primarily from a single school poses no greater health risk, nor gains any additional competitive advantage, by using school-owned instead of team-owned equipment, or by practicing at the school field instead of the local park. *Cf. McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 283 n.11 (1976) (noting that allegations that a party which engaged in behavior of "comparable seriousness" did not receive discipline "is adequate to plead an inferential case" of discrimination). Lastly, Defendants accuse CCHS of violating its rules against participation in more than one season of football. Mot. 7. But this rule on its face applies to individual students, not entire schools, and offers no basis for sanctioning an entire school program. At bottom, Defendants rely on distinctions that lack any difference, or that so far depart from the law and facts as to be transparently pretextual. *See Cottonwood Christian Ctr.*, 218 F. Supp. 2d at 1225. These distinctions do not excuse Defendants' conduct and are no basis for dismissal.

2. **The Complaint Properly Pleads a Violation of Plaintiffs' First Amendment Free Exercise Rights.**

Plaintiffs have also credibly pled that Defendants' selective imposition of sanctions on Christian schools, while withholding punishment from all other similarly situated institutions, violated Plaintiffs' First Amendment Free Exercise right. *See* Compl. ¶¶122–33. The Free Exercise Clause prohibits state actors from engaging in "even 'subtle departures from neutrality' on matters of religion," *Masterpiece Cakeshop, Ltd. v. Colo. C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 534 (1993)), and "protect[s] religious observers against unequal treatment," *Espinoza v. Mont. Dep't of Rev.*, 140 S. Ct. 2246, 2254 (2020) (quoting *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021 (2017)). Thus, when a state actor takes action that results in an overt hostility to religion, he violates the Free Exercise right. *Masterpiece Cakeshop*, 138 S. Ct. at 1729–31; *Cal. Parents for the Equalization of Educ. Materials v. Tolarkson*, 973 F.3d 1010, 1019–20 (9th Cir. 2020).

State action burdening religion must be neutral and generally applicable to avoid implicating the Free Exercise clause. *Tandon v. Newsom*, 141 S. Ct. 1294, 1296 (2021); *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (per curium). However, state action is neither neutral nor generally applicable when it "treat[s] any comparable secular activity more favorably than religious exercise." *Tandon*, 141 S. Ct. at 1296; *see also Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1877 (2021). And action that explicitly targets "religious conduct for distinctive treatment" is not permissible unless it satisfies strict scrutiny. *Lukumi Babalu*, 508 U.S. at 534; *see also Trinity Lutheran*, 137 S. Ct. at 2019 (noting that "laws that target the religious for 'special disabilities' based on their 'religious status'" are subject to strict scrutiny).

Plaintiffs allege that Defendants, including Commissioner Garrison, impermissibly considered the religious affiliations of particular schools in investigating and penalizing secondary schools for participation by student athletes and coaches in CAPS. Compl. ¶¶69, 86, 95–98. As an orthodox Christian school, CCHS' Christian values prove central to the school's mission. *Id.* ¶¶8–12. And those values extend to all aspects of CCHS' day-to-day activities, including the school's athletic program. *Id.* ¶12. As Plaintiffs allege, CCHS athletics are built on these values such that the school views its teams as an extension of its on-campus ministries. *Id.* ¶12. Yet, from the outset of Garrison's investigation, he displayed an intense focus on CCHS without conducting similar investigations of the remaining teams in the league. *Id.* ¶¶70–75. And during the course of Garrison's self-confirmatory inquisition, he refused to engage with, or even acknowledge, the plausible explanations of Plaintiffs' involvement. *Id.* ¶¶72–74.

But, as Plaintiffs allege, each team within CAPS consisted of students and coaches from public and religious schools alike. *See id.* ¶¶59–60. Although the teams in the league were diverse, a number—including Cap City—had large contingents of players affiliated with a single high school, including public high schools within CIF-SJS's jurisdiction. *Id.* ¶¶59–60. But CCHS' conduct was no more egregious than others, including multiple teams with a closer nexus to a high school than Cap City to CCHS. *Id.* ¶¶59–60. Defendants, however, conducted no meaningful investigation, nor imposed any punishment, despite their insistence that any participation in organized football outside the sanctioned CIF-SJS season amounted to a rules violation. Because Defendants refused to investigate or sanction similar conduct by secular schools, Defendants enforcement of CIF-SJS' rules was neither neutral nor generally applicable. *See Tandon*, 141 S. Ct. at 1296; *Chung v. Wash. Interscholastic Activities Ass'n*, 538 F. Supp. 3d 1170, 1186 (W.D.

Wash. 2021) ("A rule is not generally applicable if it is enforced in a selective and discriminatory manner.").

Defendants make no attempt to engage with the substance of Plaintiffs' First Amendment claim. Instead, Defendants reject the allegations as insufficient because Plaintiffs fail to identify a specific "law" "that includes as its object the suppression of religion." Mot. 11. This misconstrues both the law and Plaintiffs' claim. The First Amendment constrains not only the law, but the manner in which the law is applied. *See Chung*, 538 F. Supp. 3d at 1186. Thus, strict scrutiny may be triggered both when a regulation is facially hostile to religion, and also when a facially neutral regulation is applied in a discriminatory fashion. *Alpha Delta Chi v. Reed*, 648 F.3d 790, 804–05 (9th Cir. 2011); *see also Chung*, 538 F. Supp. at 1186 ("A rule is not generally applicable if it is enforced in a selective and discriminatory manner.").

This case implicates the latter. Defendants applied their facially neutral bylaws in novel ways and subject to manufactured and pretextual qualifications appearing nowhere in their regulations, in order to single out only the Christian schools. In so doing and sanctioning the Christian schools while failing to investigate or punish similar behavior by secular schools, Defendants applied supposed "facially neutral rules" in a manner that was neither neutral nor generally applicable. *See Cross Culture Christian Ctr. v. Newsom*, 445 F. Supp. 3d 758, 770 (E.D. Cal. 2020) (finding plaintiffs failed to demonstrate that defendants enforce facially neutral regulations against only religious entities). *Contra* Mot. 12. Because Defendants otherwise offer no defense as to how this action was narrowly tailored, nor how this disparate treatment served a compelling government interest, the Court should deny the Motion.[4]

III. The Complaint States a Claim Against Defendant Kevin Swartwood and the CIF-SJS Executive Committee.

[4] Defendants note casually that their conduct does not burden religious practice, only football. *See* Mot. at 12. But a State can no more unequally burden worship directly than other activities engaged in by religious entities. *See Fulton v. City of Philadelphia*, 141 S. Ct. 1868 (2021) (holding city discriminated against a Catholic foster care agency by imposing contractual requirements in conflict with the agency's beliefs) Providing foster care services is not inherently worship; but when motivated by religious purposes, it is fully protected. *Id.* So too, the Court has recognized repeatedly that teaching can be protected religious activity within a religious school regardless of the subject. *See Our Lady of Guadalupe School v. Morrissey-Berru*, 140 S. Ct. 2049, 2066 (2020); *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012). Providing a football program to students or coaching is no different. Indeed, coaches often have deeply spiritual relationships with their players. As pled, CCHS views its athletic programs as essential to its religious mission. Compl. ¶12. Athletics facilitate its pastoral outreach to some of Sacramento's less affluent neighborhoods and communities. *Id.* ¶12–13. Defendants' insinuation should be rejected. Defendants also argue their conduct imposes no burden because CCHS has not been suspended from competing entirely. Mot. at 12. But this too misapprehends the First Amendment. *Tandon*, 141 S. Ct. at 1296. (noting strict scrutiny applies "whenever [the State] treat[s] *any* comparable secular activity more favorably than religious exercise.")

Lastly, the Court should deny Defendants' Motion as to CCHS's claims against Kevin Swartwood. To state a claim for relief under Section 1983, "a plaintiff must show that he or she has been deprived of a right secured by the Constitution and laws of the United States . . . under color of state law." *Broam v. Bogan*, 320 F.3d 1023, 1028 (9th Cir. 2003) (cleaned up). Defendants do not dispute that the CIF-SJS Executive Committee is a state actor and that Defendant Kevin Swartwood is its President. They argue only that the Complaint lacks any allegations that implicate Swartwood. *See* Mot. 12–13.

Defendants are wrong. The Complaint alleges that, as President, Swartwood served as the chairman of the CIF-SJS Executive Committee. Compl. ¶27. It also alleges that the Executive Committee held a meeting on June 17, 2021, and that, after a short public comment session, it met in closed session to consider the allegations against CCHS and other schools. *Id.* ¶90. Finally, it alleges that the results of this meeting were disclosed on July 29, 2021, and that the Executive Committee sanctioned only Christian schools. *Id.* ¶91. Taken together, it is clear from the complaint that Swartwood presided over the meeting where the decision was made that deprived CCHS of its constitutional rights. This is sufficient to state a claim. *See Chudacoff v. Univ. Med. Ctr. of S. Nev.*, 649 F.3d 1143, 1150–51 (9th Cir. 2011) (holding that the voting members of a hospital committee could be sued in their individual capacity for committee decision).

Defendants also contend that the CIF-SJS Executive Committee cannot be sued because it is not listed under California's definition of a "public entit[y]." Mot. 14 (citing Cal. Gov't Code § 811.2). But Defendants fail to explain how this provision cabins the reach of substantive federal civil rights protections. There is no credible argument that the Executive Committee is not a state actor. And even if that argument had merit, it comes as no surprise that the CIF-SJS Executive Committee is not specifically mentioned in a list that includes "public authority, public agency, and any other political subdivision or public corporation in the State." Cal. Gov't Code § 811.2. CIF and CIF-SJS are not mentioned in the definition of "public entity" either, but Defendants do not dispute that they have the capacity to be sued.[5]

CONCLUSION

For the aforementioned reasons, this Court should deny Defendants' Motion to Dismiss.

[5] Plaintiffs do not oppose Defendants' Motion to Dismiss as to CIF. Additionally, if the Court agrees that the CIF-SJS Executive Committee is improperly named as a defendant, Plaintiffs request leave to amend to add CIF-SJS as a defendant. *See Waits v. Weller*, 653 F.2d 1288, 1290 (9th Cir. 1981).

Date: June 17, 2022

Respectfully submitted,

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