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 LOS ALTOS SCHOOL DISTRICT; BOARD
 OF TRUSTEES OF THE LOS ALTOS
 SCHOOL DISTRICT; and JEFFREY BAIER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SANTA CLARA

BULLIS CHARTER SCHOOL,

 Petitioner,

 v.

 LOS ALTOS SCHOOL DISTRICT; BOARD
 OF TRUSTEES OF THE LOS ALTOS
 SCHOOL DISTRICT; JEFFREY BAIER, in
 his capacity as District Superintendent,

 Respondents.

 LOS ALTOS SCHOOL DISTRICT; BOARD
 OF TRUSTEES OF THE LOS ALTOS
 SCHOOL DISTRICT; JEFFREY BAIER, in
 his capacity as District Superintendent,
 Cross-Complainants,
 v.
 BULLIS CHARTER SCHOOL,

 Cross-Defendant.

Case No. 112CV232187

**NOTICE OF ENTRY OF ORDER
 DENYING BULLIS CHARTER
 SCHOOL'S SPECIAL MOTION TO
 STRIKE**

Date: January 8, 2013
 Time: 9:00 a.m.
 Dept: 2

Judge: Hon. Patricia Lucas

TO: PETITIONER BULLIS CHARTER SCHOOL AND ITS ATTORNEYS OF RECORD:
PLEASE TAKE NOTICE that on January 25, 2013, the Court entered an Order denying Bullis Charter School's Special Motion to Strike the First Amended Cross-Complaint filed by respondents and cross-complainants Los Altos School District; the Board of Trustees of the Los Altos School District and Jeffrey Baier. A copy of that order is attached hereto.

DATED: January 31, 2013

BURKE, WILLIAMS & SORENSEN, LLP

REED SMITH LLP

By



Ashley L. Shively
Attorneys for Respondents and Cross-Complainants
Los Altos School District; Board of Trustees of The
Los Altos School District; and Jeffrey Baier

EXHIBIT A

COPY

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FILED

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LOS ALTOS SCHOOL DISTRICT; BOARD
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SCHOOL DISTRICT; and JEFFREY BAIER

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

BULLIS CHARTER SCHOOL,

Petitioner,

v.

LOS ALTOS SCHOOL DISTRICT; BOARD
OF TRUSTEES OF THE LOS ALTOS
SCHOOL DISTRICT; and JEFFREY BAIER,
in his capacity as District Superintendent,

Respondents.

LOS ALTOS SCHOOL DISTRICT; BOARD
OF TRUSTEES OF THE LOS ALTOS
SCHOOL DISTRICT; JEFFREY BAIER, in
his capacity as District Superintendent,
Cross-Complainants,

v.

BULLIS CHARTER SCHOOL,

Cross-Defendant.

Case No. 1-12-CV-232187

**[PROPOSED] ORDER DENYING
BULLIS CHARTER SCHOOL'S
SPECIAL MOTION TO STRIKE**

Date: January 8, 2013
Time: 9:00 a.m.
Dept: 2
Judge: Hon. Patricia Lucas

(ENDORSED)
FILED
JAN 23 2013
DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
DEPUTY
A. Floresca

1 Petitioner and cross-defendant Bullis Charter School has filed a special motion to the First
2 Amended Cross-Complaint ("FACC") filed by respondents and defendants Los Altos School
3 District, Board of Trustees of the Los Altos School District, and Jeffrey Baier (collectively,
4 "LASD").

5 The application of amicus Huttlinger Alliance for Education is GRANTED. Huttlinger's
6 request for judicial notice is GRANTED.

7 **A. Public Interest Exception of Code of Civil Procedure 425.17**

8 LASD argues that the FACC falls within the public interest exception of Code of Civil
9 Procedure section 425.17, which was adopted in 2003 to address "a disturbing abuse of Section
10 425.16...". This statute provides, in relevant part:

11 Section 425.16 does not apply to any action brought solely in the public interest or on
12 behalf of the general public if all of the following conditions exist:

13 (1) The plaintiff does not seek any relief greater than or different from the relief
14 sought for the general public or a class of which the plaintiff is a member. A claim for
15 attorney's fees, costs, or penalties does not constitute greater or different relief for
16 purposes of this subdivision.

17 (2) The action, if successful, would enforce an important right affecting the public
18 interest, and would confer a significant benefit, whether pecuniary or nonpecuniary,
19 on the general public or a large class of persons.

20 (3) Private enforcement is necessary and places a disproportionate financial burden
21 on the plaintiff in relation to the plaintiff's stake in the matter.

22 (Code Civ. Proc. § 425.17, subd. (b).)

23 LASD contends that its FACC falls within this exception because LASD seeks only
24 declaratory relief and access to public records. Bullis counters that the first requirement has not
25 been met because LASD is seeking "very LASD-specific relief": i.e., LASD is "advancing its own
26 interests in seeking to avoid sharing valuable public school facilities which it exclusively controls"
27 (Reply Memorandum, at 5:6-7, 28).

28 However, Bullis's argument begs the question. If LASD is correct and it ought not to be
required to provide facilities to Bullis, then the relief in the form of a judicial declaration benefits the
People of the State of California to the same extent that it benefits LASD: the law would be followed

1 as it relates to the respective rights and obligations of the school district and the charter school. In
2 that respect, LASD does not seek any relief greater than or different from the relief sought for the
3 general public. *People ex re. Strathmann v. Acacia Research Corp.* (2012) 210 Cal.App.4th 487,
4 503-04 (reversing order granting anti-SLAPP motion against qui tam complaint of former employee
5 concerning insurance fraud: public interest exception applies even though employee could recover
6 bounty of \$30 million to \$37.5 million). This case bears no resemblance to *City of Colton v.*
7 *Singletary* (2012) 206 Cal.App.4th 751, cited by Bullis, in which the City of Colton sought monetary
8 relief arising out of a business relationship with a real estate developer.

9 Accordingly, the public interest exception in section 425.17 applies to this case.

10 **B. Application of Code of Civil Procedure 425.16**

11 Even if the public interest exemption did not apply to bar this special motion to strike, the
12 record does not establish that each of the two prongs of the analysis can be satisfied.

13 **i. Arising From Protected Activity**

14 Bullis argues that the FACC arises from an act in furtherance of Bullis's right of petition or
15 free speech. Bullis first states that charter schools can exist and operate only through petitioning
16 activity. Bullis argues that the FACC's allegations that Bullis is undeserving of its charter status
17 because of its admissions and fundraising policies arise from Bullis's continued charter petitioning
18 activity. In support of this argument, Bullis cites to paragraph 72 in the FACC, which states that
19 LASD seeks a declaration that Bullis's admissions practices are discriminatory and that LASD is not
20 required to furnish Bullis with any facilities until Bullis's improper practices have been rectified.
21 Paragraph 72 does not state that Bullis should lose its charter status. Consequently, Bullis's
22 argument in this regard is without merit.

23 Bullis also argues that its petitioning activity for access to "reasonably equivalent" school
24 district facilities is protected petitioning activity. LASD does not dispute this. Education Code
25 section 47614 states, in relevant part:

26 Each school district shall make available, to each charter school operating in the
27 school district, facilities sufficient for the charter school to accommodate all of the
28 charter school's in-district students in conditions reasonably equivalent to those in
which the students would be accommodated if they were attending other public

1 schools of the district. Facilities provided shall be contiguous, furnished, and
2 equipped, and shall remain the property of the school district. The school district shall
3 make reasonable efforts to provide the charter school with facilities near to where the
4 charter school wishes to locate, and shall not move the charter school unnecessarily.

(Ed. Code, § 47614, subd. (b).)

5 Bullis's Verified Petition for Writ of Mandate and Complaint for Declaratory Relief

6 ("Petition") filed in this action seeks to compel LASD to provide reasonably equivalent facilities to
7 Bullis students in accordance with Proposition 39, which requires that school district facilities be
8 shared fairly among all public school pupils. (Petition, p. 4:10-17.) The first and third causes of
9 action in the FACC seek declaratory relief that LASD can refuse to furnish Bullis with facilities
10 because of Bullis's admissions practices and large amount of private funding. (FACC, ¶¶ 72, 91-
11 93.)

12 LASD cites to *City of Cotati v. Cashman* (2002) 29 Cal. 4th 69, 78 for the proposition that
13 where a public entity requests only declaratory relief to clarify its legal duties, its request does not
14 *arise from* protected activity. The Supreme Court stated that "the mere fact an action was filed after
15 protected activity took place does not mean it arose from that activity. The anti-SLAPP statute
16 cannot be read to mean that 'any claim asserted in an action which arguably was filed in retaliation
17 for the exercise of speech or petition rights falls under section 425.16, whether or not the claim is
18 *based on* conduct in exercise of those rights.'" (*Id.* at pp. 76-77, quoting *ComputerXpress, Inc. v.*
19 *Jackson* (2001) 93 Cal.App.4th 993, 1002, italics in original.)

20 In response, Bullis cites to *City of Santa Monica v. Stewart* (2005) 126 Cal. App. 4th 43.
21 *City of Santa Monica* involved lawsuits that were brought relating to the enforcement of initiatives
22 approved by voters in Santa Monica and Pasadena. The initiatives sought to prevent city officials
23 from receiving certain advantages from persons or entities who derived benefit from discretionary
24 decisions made by those officials. (*Id.* at p. 50.) In one of the suits involved in the appeal, the trial
25 court had "denied an anti-SLAPP motion brought by the initiative's sponsor to strike Pasadena's
26 cross-complaint, granted a summary judgment motion in favor of the city, and denied the initiative
27 sponsor's motion for attorneys' fees under the private attorney general statute." (*Ibid.*) In opposing
28

the motion, Pasadena argued that the sponsor was properly named in the cross-complaint “precisely because [it] chose to intervene and demand that Pasadena certify the Initiative....” (Id. at p. 73-74.)

There is no similar assertion in this case, which more closely resembles *City of Cotati*, 29 Cal.4th at 80: both the first act (Bullis’s petitioning activity) and the pleading subject to the anti-SLAPP motion (the FACC) arise from the same controversy (here, allocation of school facilities), as distinct from the latter arising from the former. Bullis has not met the first prong of the section 425.16 test.

ii. Probability of Prevailing

Had Bullis met its burden to show that LASD’s claims arise out of protected activity, the Court would reach the issue of whether LASD has shown a probability of prevailing. Under the test for the second prong of the anti-SLAPP analysis, the court does “not consider the credibility of evidence nor [] compare the weight of the evidence; rather, [it] accept[s] as true the evidence that is favorable to the cross-complainant and evaluate[s] the cross-defendant’s evidence only for purpose of determining whether it has defeated the cross-complainant’s evidence as a matter of law. *City of Colton*, 206 Cal.App.4th at 769-70.

With regard to the second and fourth causes of action, for reasons discussed in greater detail in connection with the demurrer, the Court finds that these causes of action have at least minimal merit and, therefore, LASD has shown that it has a probability of prevailing. (See *Oasis West Realty, LLC v. Goldman* (2011) 51 Cal. 4th 811, 820 [If a plaintiff can show a probability of prevailing on any part of its claim, the cause of action is not meritless and will not be struck].)

LASD argues that a judicial declaration will provide the certainty it needs to comply and to assure its community that the law is being properly followed. LASD contends, therefore, that so long as the Court provides such a declaration, LASD will have “prevailed”. Neither party has provided case authority addressing precisely this issue in a section 425.16 context. Obtaining a declaration “will prevent further issues arising from the conflicting interpretations, and [will be] an effective remedy to settle the parties’ right on the future regarding the meaning of the [relevant law].” *California School Bds. Assn v. State of California* (2011) 192 Cal.App.4th 770, 791. Bullis has not argued that LASD is not entitled to a declaration. Code of Civil Procedure section 1032

1 provides that when a party recovers "other than monetary relief" (i.e., declaratory relief), the
2 prevailing party shall be determined by the court.

3 As stated by the Sixth District Court of Appeal, the "shared fairly," "reasonably equivalent,"
4 and contiguous provisions require a district, in responding to a Proposition 39 facilities request, to
5 give the same degree of consideration to the needs of charter school students as it does to the
6 students in district-run schools. (*Bullis Charter School v. Los Altos School Dist.* (2011) 200 Cal.
7 App. 4th 1022, 1040, quoting *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005)
8 130 Cal. App. 4th 986, 999.) The California Constitution, at articles 5, 7.5 and 8, requires uniformity
9 in public education; discrimination and tuition are prohibited in public education. Educ. Code
10 section 201, 220, 221.1 and 235. The Court cannot conclude, as a matter of law, that LASD is not
11 entitled to a declaration to provide certainty and guidance to the parties and to the community.

12 Accordingly, Bullis's special motion to strike is DENIED.

13
14 Patricia Lucas

15 DATED: ~~JAN 22 2013~~, 2013

Hon. Patricia M. Lucas
Judge of the Superior Court

16
17 APPROVED AS TO FORM:

18
19 MORRISON & FOERSTER LLP

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21 Arturo Gonzalez ^{als}
22 Arturo J. Gonzalez
23 Miriam A. Vogel
24 Suzanna P. Brickman
Attorneys for Petitioner and Cross-Defendant
Bullis Charter School
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1 **PROOF OF SERVICE**

2 *Bullis Charter School v. Los Altos School District, et al.*

3 **Santa Clara Superior Court No. 112CV232187**

4 I am a resident of the State of California, over the age of eighteen years, and not a party to
5 the within action. My business address is REED SMITH LLP, 101 Second Street, Suite 1800, San
6 Francisco, California 94105-3659. On January 31, 2013, I served the following document(s) by the
method indicated below:

7 **NOTICE OF ENTRY OF ORDER DENYING BULLIS CHARTER SCHOOL'S**
8 **SPECIAL MOTION TO STRIKE**



by transmitting via email to the parties at the email addresses listed below:

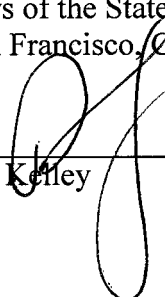
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17 I declare under penalty of perjury under the laws of the State of California that the above is
18 true and correct. Executed on January 31, 2013, at San Francisco, California.

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David Kelley