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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN
8 DIEGO; AND MICHAEL RODDY

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MINDY BARLOW and DALIA R. SMITH,

Plaintiffs,

v.

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO; MICHAEL
RODDY, individually and in his official capacity
as the Executive Officer of the Superior Court of
California, County of San Diego; and DOES 1
through 20 inclusive,

Defendants.

Case No. 07-cv-1926-LAB(LSP)

**DEFENDANTS SUPERIOR
COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO AND
MICHAEL RODDY'S NOTICE
OF MOTION AND MOTION TO
DISMISS FIRST AMENDED
COMPLAINT**

Date: January 14, 2008
Time: 10:30 a.m.
Courtroom: 9
Judge: Larry Alan Burns

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TO EACH PARTY AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January 14, 2008, at 10:30 a.m., or as soon thereafter as
the matter can be heard, in Courtroom 9 of the above-entitled court, located at 940 Front Street,
San Diego, California 92101, Defendants Superior Court of California, County of San Diego and
Michael Roddy ("Defendants") will, and hereby do, move this Court to dismiss Plaintiffs' First
Amended Complaint in its entirety without leave to amend pursuant to Federal Rule of Civil
Procedure 12(b)(6).

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The grounds for this Motion are that Defendants’ decision to deny Plaintiff employees’ request to conduct a Bible study in Superior Court facilities was justified by multiple legitimate governmental interests that outweigh Plaintiff employees’ speech interests, including the Superior Court’s duty to avoid violating the federal Establishment Clause and related California constitutional provisions. Plaintiffs’ Free Exercise cause of action fails under the same balancing test, which governs all public employee First Amendment Claims. Likewise, Plaintiffs’ Due Process and facial invalidation challenges fail, because the Superior Court’s Administrative Policy at issue sets forth in detail the factors Superior Court officials must apply in considering requests for use of Superior Court facilities. Plaintiffs’ Federal Establishment Clause cause of action is also meritless, because the Superior Court’s conduct was undertaken for the purpose of avoiding an Establishment Clause violation, and under governing Ninth Circuit precedent it therefore cannot itself constitute an Establishment Clause violation. Finally, Plaintiffs’ California constitutional claims are analyzed under precedent that mirrors the federal claims, and therefore these claims should be rejected as well.

This motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, all other pleadings, papers and records filed with the Court concerning this matter, matters subject to judicial notice, and on such other matters as may be presented at the hearing of this motion.

Dated: November 20, 2007

MARK C. ZEBROWSKI
M. ANDREW WOODMANSEE
KATHERINE L. PARKER
MORRISON & FOERSTER LLP

By: /s/ Mark C. Zebrowski
Mark C. Zebrowski

Attorneys for Defendants
SUPERIOR COURT OF
CALIFORNIA, COUNTY OF SAN
DIEGO; AND MICHAEL RODDY

CERTIFICATE OF SERVICE

I, Mark C. Zebrowski, hereby certify that on November 20, 2007, I caused to be electronically filed a true and correct copy of the attached **Defendants Superior Court of California, County of San Diego and Michael Roddy’s Notice of Motion and Motion to Dismiss First Amended Complaint** with the Clerk of the Court using CM/ECF, which will send notification that such filing is available for viewing and downloading to the following counsel of record for Plaintiffs:

Jennifer Lynn Monk
Advocates for Faith and Freedom
24910 Las Brisas Road, Suite 110
Murrieta, CA 92562
(951)304-7583
Fax: (951)600-4996
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Robert H. Tyler
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I, Mark C. Zebrowski, hereby further certify that on November 20, 2007, I caused to be served via United Parcel Service overnight delivery a true and correct copy of the attached **Defendants Superior Court of California, County of San Diego and Michael Roddy’s Notice of Motion and Motion to Dismiss First Amended Complaint** to the following counsel of record for Plaintiffs:

Francis J. Manion
American Center for Law & Justice
6375 New Hope Road
New Hope, KY 40052

Geoffrey R. Surtees
American Center for Law & Justice
6375 New Hope Road
New Hope, KY 40052

Executed at San Diego, California, on this 20th day of November, 2007.

MORRISON & FOERSTER LLP

By: /s/ Mark C. Zebrowski
Mark C. Zebrowski

Attorneys for Defendants
SUPERIOR COURT OF CALIFORNIA, COUNTY
OF SAN DIEGO; AND MICHAEL RODDY