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13 **UNITED STATES DISTRICT COURT**  
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 FAIR EDUCATION SANTA  
16 BARBARA, INC., a 501(c)(3)  
17 organization

18 Plaintiff,

19 vs.

20 SANTA BARBARA UNIFIED  
21 SCHOOL DISTRICT, a public school  
22 district; and JUST COMMUNITIES  
23 CENTRAL COAST, INC., a  
24 501(c)(3) organization,

25 Defendants.

Case No.: 2:18-cv-10253-SVW-PLA

**PLAINTIFF'S REPLY  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR PRELIMINARY  
INJUNCTION**

[Declaration of Peter D. Scott;  
Evidentiary Objections Filed  
Concurrently Herewith]

The Honorable Stephen V. Wilson

Date: February 25, 2019  
Time: 1:30 PM  
Courtroom: 10A

Trial Date: None Yet

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1 **I. INTRODUCTION**

2 In its Motion for Preliminary Injunction, plaintiff Fair Education Santa  
3 Barbara, Inc. (“FESB”) demonstrated that the Court should issue a preliminary  
4 injunction halting further action under defendant Santa Barbara Unified School  
5 District’s (“SBUSD”) contract with defendant Just Communities Central Coast, Inc.  
6 (“JCCC”) (the “JCCC Contract”). The JCCC Contract is void and illegal under  
7 California Public Contracts Code § 20111 for SBUSD’s failure to let the contract  
8 for public bidding and a preliminary injunction is not only warranted, but necessary.

9 Both SBUSD and JCCC concede that the JCCC Contract was not let for  
10 public bidding. Both SBUSD and JCCC also do not dispute that such public  
11 bidding is generally required for contracts entered by public entities like SBUSD.  
12 However, SBUSD and JCCC argue that the JCCC Contract fits within a narrow  
13 “special services” exception to the public bidding requirement. For starters,  
14 however, even before determining whether Defendants provide “special services”  
15 within the meaning of the law (and they do not), they must prove that they provide  
16 “financial, economic, accounting, engineering, legal or administrative” services. In  
17 this regard, Government Code § 53060 requires **both** that the services be “special”  
18 **and** that the services be “financial, economic, accounting, engineering, legal or  
19 administrative” services.<sup>1</sup> Neither of the Defendants argue, much less provide  
20 evidence, to show that they provide any of these latter services. And even assuming  
21 *arguendo* that they did, they also fail to satisfy the “special services” portion of §  
22 53060. The services in question do not meet the “special services” factors set forth  
23 in *Jaynes v. Stockton*, 193 Cal. App. 2d 47 (1961). Consequently, the JCCC  
24 Contract was required to be let for public bidding. The failure to do so renders the  
25 contract void as a matter of law.

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27 <sup>1</sup> See *Viceroy Gold Corp. v. Aubry*, 75 F.3d 482, 490 (9th Cir. 1996) (in  
28 statutory interpretation, “[w]ords must be construed in context, and statutes must be  
harmonized, both internally **and with each other**, to the extent possible”) (emphasis  
added).

1           Additionally, SBUSD and JCCC have not sufficiently refuted FESB’s  
2 showing of irreparable harm and that the balance of hardships and public interest  
3 weigh in favor of granting the preliminary injunction.

4           JCCC’s additional mistaken argument regarding jurisdiction, is addressed by  
5 FESB in its Opposition to JCCC’s Motion to Dismiss. (Dkt. No. 36.) In short, the  
6 Court has supplemental jurisdiction over FESB’s Sixth Claim for Relief (for  
7 Violation of Public Contract Code § 20111), as it arises out of a common nucleus of  
8 operative facts and is inextricably intertwined with FESB’s federal question  
9 claims.<sup>2</sup>

10           In sum, FESB respectfully requests that this Court grant the requested  
11 injunctive relief.

12 **II. ARGUMENT**

13 **A. FESB Has a Likelihood of Success on Its Claim For Violation Of**  
14 **California Public Contract Code § 20111**

15           In its Motion, FESB demonstrated a likelihood of success on its Sixth Claim  
16 for Relief for violation of California Public Contract Code § 20111, because  
17 SBUSD was required to, but did not, let the JCCC Contract for public bidding.  
18 FESB demonstrated that the JCCC Contract falls directly within the ambit of Public  
19 Contracts Code § 20111, and that neither the “special services” exception under  
20 Government Code § 53060, or the “professional services” exception under Public  
21 Contract Code § 20111(d) apply.

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25 <sup>2</sup> FESB files Objections concurrently herewith to the various Declarations  
26 submitted by SBUSD in support of its Opposition. Notably, and without limitation,  
27 the so-called “Contribution Analysis” accompanying the Schwartz Declaration  
(which JCCC regularly flaunts in an effort to show the purported success of its  
indoctrination programming), is conclusory hearsay lacking in foundation which  
also is irrelevant to the pending Motion. As FESB shall prove at the appropriate  
time in this litigation, the self-serving “Contribution Analysis” and its bankrupt and  
bereft “methodology” and “analysis” is not worth the paper it is written on.

1 In opposition, SBUSD does not dispute that Public Contract Code § 20111  
2 applies to the JCCC Contract and that the “general rule require[s] competitive  
3 bidding by public entities.” (SBUSD Opp., p. 8.)

4 JCCC, unlike SBUSD, argues that Public Contract Code § 20111 does not  
5 apply because the JCCC Contract is purportedly for “professional services.”<sup>3</sup>  
6 (JCCC Opp. pp. 8-9.) However, as explained in FESB’s Motion at page 18, JCCC  
7 does not provide “professional services.” JCCC’s services require no licensing,  
8 certification or qualifications. California Corporation Code § 13401(a) (which  
9 appears to be the only California statute defining the term) defines “professional  
10 services” as “any type of professional services that may be lawfully rendered only  
11 pursuant to a license, certification, or registration authorized by the Business and  
12 Professions Code, the Chiropractic Act, or the Osteopathic Act.” In an effort to  
13 shoehorn its services into this definition, JCCC argues that it provides “professional  
14 services” because its instructors are “trained” (whatever that means) and “most”  
15 have bachelor’s degrees. (*Id.*) This definition of “professional services” was  
16 created out of whole cloth by JCCC (as no supporting legal authority is cited), does  
17 not fall within the statutory definition, and is so broad that if applied, would allow  
18 everyone who has received a bachelor’s degree to be designated a “professional.”  
19 JCCC’s services are not “professional services” and thus, the JCCC Contract was  
20 required to have been submitted for public bidding.

21 SBUSD and JCCC also do not dispute that the purpose behind the public  
22 bidding requirements is to “maintain[] integrity in government” and that “any  
23 exception to public bidding requirements should be strictly construed” and “receive  
24 close judicial scrutiny.” (Motion p. 18 (quoting *MCM Construction, Inc. v. County*  
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27 <sup>3</sup> Subsection (d) of Public Contract Code § 20111 provides that the section  
does not apply to “professional services or advice, insurance services, or any other  
purchase or service otherwise exempt from this section ...”



1 of *San Francisco*, 66 Cal. App. 4th 359, 369 (1998) and *Marshall v. Pasadena*  
2 *Unified School Dist.*, 119 Cal. App. 4th 1241, 1256 (2004).)

3 SBUSD and JCCC also do not dispute much of the factual underpinning for  
4 FESB's Motion, including without limitation (1) the factual description of the  
5 "services" provided by JCCC, (2) that JCCC's service providers do not have any  
6 professional licensing or certifications (and that its personnel have no such  
7 licensing), (3) that the JCCC Contract is not "temporary" in any sense of the word,  
8 and (4) the incestuous and revolving door relationship between JCCC and SBUSD  
9 and the Board. These relationships bear the stench of undue influence peddling and  
10 favoritism that the public bidding process is designed to eliminate. *See Konica Bus.*  
11 *Machines USA Inc. v. The Regents of The University of California*, 206 Cal. App.  
12 3d 449, 456 (1988) ("The purpose of requiring governmental entities to open the  
13 contracts process to public bidding is to eliminate favoritism, fraud and corruption;  
14 avoid misuse of public funds; and stimulate advantageous market place  
15 competition.").

16 Instead, SBUSD and JCCC argue that (1) they fall within the "special  
17 services" exception and that (2) despite the undisputed strong public policy in favor  
18 of public bidding, as concerns JCCC, "competitive bidding would be undesirable,  
19 impractical or impossible."

20 **1. The JCCC Contract Was Required to be Submitted to**  
21 **Public Bidding**

22 Government Code § 53060 requires both that the services be "special" *and*  
23 that the services be "financial, economic, accounting, engineering, legal or  
24 administrative". SBUSD and JCCC do not, because they cannot, make any effort to  
25 show that the services in question fall within the statutory ambit of "financial,  
26 economic, accounting, engineering, legal or administrative" services. That should  
27 be the end of the analysis and the JCCC Contract must be submitted for public  
bidding. Assuming *arguendo* that the "special services" portion of § 53060 even

1 needs to be addressed (and it does not), neither of the Defendants satisfy the  
2 “special services” factors set forth in *Jaynes v. Stockton*, 193 Cal. App. 2d 47, 51-52  
3 (1961).<sup>4</sup>

4 a. **JCCC’s Services Are Not “Financial, Economic,**  
5 **Accounting, Engineering, Legal Or Administrative”**  
6 **Services**

7 JCCC provides purported “unconscious bias,” “inclusivity” and “diversity”  
8 training programs. (Scott Decl. ¶¶ 7-11, Exs. C-H, L.) None of these services are  
9 “financial, economic, accounting, engineering, legal or administrative” services.  
10 Thus, SBUSD and JCCC do not satisfy the express requirements of the statute and  
11 the Court need look no further to determine whether the subject services are  
12 “special.”

13 SBUSD offers no argument regarding this express statutory language. JCCC  
14 acknowledges the language, but tepidly argues, without any legal authority, that the  
15 Court should deviate from the plain words of the statute, and that “[t]he question is  
16 not whether the services fall under the enumerated list of ‘financial, economic,  
17 accounting, engineering, legal or administrative’ services [...], but rather the key  
18 inquiry is whether the services are ‘special.’” (JCCC Opp. p. 11:6-9.) JCCC’s  
19 argument is contrary to the plain language of § 53060, and in particular ignores the  
20 word “*and*” which appears between the words “special services” and “financial,  
21 economic” etc.

22 Accordingly, because Government Code § 53060 does not apply, the Court  
23 need not address whether the subject services “are special” to determine that the  
24 JCCC Contract should have been let for public bidding.

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<sup>4</sup> Neither SBUSD or JCCC even acknowledge that *Jayne v. Stockton* sets forth the pertinent factors in the “special services” analysis.

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b. **Government Code § 53060 Does Not Apply For the Separate and Independent Reason that JCCC’s Services Are Not “Special”**

JCCC’s services are not “special” as also required by Government Code § 53060. The test for whether services are “special” under Government Code § 53060 is set forth in *Jaynes v. Stockton*, 193 Cal. App. 2d 47 (1961). The analysis “is the result of a composite consideration of various factors [including] those which relate to the nature of the services required to the subject matter thereof, to the qualifications of the person capable of furnishing them, to their availability from public sources and to the temporary basis of the employment through which they are obtained.” *Id.* at 51-52. Both SBUSD and JCCC ignore the test set out in *Jayne* and fail to address all of these factors.

First, the nature of the services provided by JCCC are not “special,” which *Jaynes, supra*, defines as “unique, unusual [] out of the ordinary [and] ‘extraordinary’ ...” *Jaynes, supra* 194 Cal. App. 2d at 51 (internal citations omitted). FESB demonstrated that scores of other vendors provide the same or similar training that JCCC provides.<sup>5</sup> (Dkt. No. 9 [Scott Decl., ¶ 19]). JCCC even admits that similar programs are run by other providers at Oregon State University, USC, UCLA and Scripps College. (Schwartz Decl., ¶ 12.) SBUSD and JCCC argue that the other “unconscious bias” programs identified by FESB are different from JCCC’s programming in subtle ways. However, the differences and pros and cons of each available program are what should be considered by the Board as part of the public bidding process. Here, no other providers were ever even given a chance to present their programs, the services they provide, and the cost of such

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<sup>5</sup> Indeed, a huge industry of “unconscious bias and diversity training” grew from the issuance in 2011 of the Obama Administration’s Executive Order 13583 (which among other things, addressed the requirement of such training for the federal workforce).

1 training.<sup>6</sup> The JCCC Contract was instead simply handed to JCCC on a silver  
2 platter, likely due in large part to the numerous conflicts of interest existing between  
3 the Defendants -- conflicts which neither Defendant refutes in their briefing.

4 Second, the nature of JCCC's services do not require any special licensing,  
5 certification or qualification. This is undisputed by both SBUSD and JCCC.  
6 Instead, SBUSD and JCCC argue that many of JCCC's instructors have bachelor's  
7 degrees. However, most of these bachelors degrees are in fields completely  
8 unrelated to the "services" provided by JCCC (Scott Decl., Ex. H (JCCC "About  
9 Us" website [e.g. degrees in business administration, "traditional healing and  
10 medicine," "political management," etc.]).) If anything, the evidence submitted by  
11 JCCC regarding the educational backgrounds of its staff simply highlights that there  
12 are apparently no specific qualifications at all required to teach JCCC's brand of  
13 indoctrination.

14 Third, JCCC's services *are not* temporary. FESB explained in its Motion  
15 that one of the key factors in the "special services" test set forth in *Jaynes*, is  
16 whether the services are "temporary," and that JCCC's services are anything but.  
17 (Motion, p. 22.) JCCC has been continuously employed by SBUSD since 2005.  
18 (Schwartz Decl., ¶ 5.) This is more than enough time for SBUSD to train its own  
19 staff to provide diversity training, without paying out nearly \$300,000 per year to  
20 JCCC. SBUSD and JCCC do not even address this necessary factor in their  
21 Opposition briefing.

22 Consequently, SBUSD and JCCC do not and cannot demonstrate that JCCC's  
23 services are "special." Thus, for this separate and independent reason alone,  
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27 <sup>6</sup> Neither SBUSD or JCCC make any effort to address the numerous out of  
state cases cited by FESB in the Motion wherein services were held to be not  
"special" under similar public bidding statutes. (See Motion, p. 21:7-13.)

1 Government Code § 53060’s exception to the public bidding requirement is not  
2 applicable.

3           **2.     Public Bidding For The JCCC Contract Is Not**  
4                   **“Undesirable, Impractical And Impossible” And Instead Is**  
5                   **Designed To Prevent The Rampant Favoritism And Undue**  
6                   **Influence Occuring Here**

7           In another effort to avoid § 53060’s express requirements, SBUSD and JCCC  
8 argue that public bidding for the JCCC Contract would be “undesirable, impractical  
9 and impossible,” claiming that there are no other providers in Santa Barbara that  
10 can perform JCCC’s services. (SBUSD Opp. 11:6-18.) Not so.

11           FESB identified examples of other local providers in its Motion. (Motion, p.  
12 20.) In this Reply, FESB adds another example to that list -- the local Santa  
13 Barbara Anti-Defamation League chapter -- which offers diversity and inclusivity  
14 training programs similar to those currently being run by the San Diego Anti-  
15 Defamation League in the San Diego Unified School District. (Scott Reply Decl., ¶  
16 2, Ex. A.)

17           Nor is public bidding the inefficient bureaucratic nightmare conjured by  
18 JCCC and SBSUD. To the contrary, public bidding is designed to *increase* the  
19 efficiency and lower the costs of procuring goods and services, which is reflected in  
20 the ease of which both posting and submitting bids can be achieved. For instance,  
21 the California Bid Network, [californiabids.com](http://californiabids.com), provides a portal through which  
22 contracts can be bid upon. The system is not complicated: as can be seen in  
23 accompanying sample bid, the bidding system is used by school districts such as  
24 the Antioch Unified School District. (Scott Reply Decl., ¶ 3, Ex. B.)

25           In short, the statutory requirement for public bidding *is not* undersireable,  
26 impractical or impossible (*and even if it were, the statutory public bidding*  
27 *requirement cannot be circumvented regardless*).

1                                   **3.     The Authorities Relied Upon By SBUSD and JCCC**  
 2   **Concerning Public Bidding Requirements Are Inapposite**

3           FESB’s Motion has already addressed most of the authorities cited by  
 4 SBUSD’s and JCCC’s Opposition briefing as concerns the public bidding  
 5 requirements for the JCCC Contract. However, SBUSD and JCCC cite several  
 6 additional authorities in support of their arguments that FESB addresses herein.

7           First, SBUSD and JCCC cite to *Weinstein v. Cty. Of Los Angeles*, 237 Cal.  
 8 App. 4th 944, 967 (2015) for the proposition that California courts purportedly do  
 9 not apply Government Code § 20111 where competitive bidding “would not  
 10 produce an advantage.” However, *Weinstein* stands for no such thing. Indeed,  
 11 *Weinstein* did not even involve Public Contracts Code § 20111, but instead  
 12 addresses provisions in the Los Angeles County Code applying to the County’s  
 13 methodology in contracting with private businesses. *Weinstein, supra*, 237 Cal.  
 14 App. 4th at 949-950. Of note, the Los Angeles County Code public bidding  
 15 requirements at issue in *Weinstein* contained express exceptions where public  
 16 bidding was not feasible or would not produce a benefit. *Id.* at 950. These  
 17 exceptions expressly written into the Los Angeles County Code and relied upon by  
 18 the Court in *Weinstein* are *not* present in Government Code § 20111. *Weinstein* is  
 19 not applicable here and does not stand for the proposition for which SBUSD and  
 20 JCCC cite it.<sup>7</sup> And even if such exceptions applied to the statutes in question in the  
 21 present action (and they do not), there can be no credible dispute that public bidding  
 22 for the JCCC Contract is both feasible and more than likely to produce a benefit.

23           Second, SBUSD and JCCC cite to *Cal. Sch. Emps. Ass’n v. Sunnyvale*  
 24 *Elementary Sch. Dist.*, 36 Cal. App. 3d 46, 62 (1973), for the proposition that

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27           <sup>7</sup> SBUSD’s citation to *Graydon v. Pasadena Redevelopment Agency*, 104 Cal.  
 28 App. 3d 631 (1980) is likewise unavailing as it does not involve Public Contracts  
 Code § 20111, but rather California Health & Safety Code § 33422.

1 “research and development services” constitute special services under Government  
2 Code § 53060. This case supports FESB and undermines Defendants’ arguments.

3 In *Sunnyvale*, certain school districts contracted with School Research and  
4 Service Corporation (“SRS”) to obtain access to research and analysis conducted by  
5 SRS on school administration specific topics such as “the organization and staffing  
6 of business services, assessment of electronic data processing services,” “custodial  
7 operations” and “high school administration.” *Id.* at 55. A challenge was made to  
8 the contract with SRS under Government Code § 53060. The Court ultimately  
9 found that the contract with SRS was for “special services,” and thus was within the  
10 districts’ contracting authority. However, in finding that the Government Code §  
11 53060 exception applied, before determining whether the services were “special”  
12 the Court *first found* that the services were in the area of “finance, economics,  
13 accounting, engineering and administration” – i.e. the only subject areas to which  
14 Government Code § 53060 applies. *Id.* at 53, 60-61.

15 Thus, the case supports FESB’s positions (as addressed in the Motion at pp.  
16 18 and above at p. 5), and directly undercuts SBUSD and JCCC’s argument that this  
17 Court can completely bypass and ignore Government Code § 53060’s requirement  
18 that the services be within the areas of “financial, economic, accounting,  
19 engineering, legal or administrative matters...” As explained above, SBUSD and  
20 JCCC do not even try to argue that JCCC’s services fall within these express  
21 categories. Consequently, Defendants do not satisfy Government Code § 53060  
22 and *Sunnyvale* is unavailing.

23 Finally, SBUSD’s citation to 93 Cal. Op. Att’y Gen. 63 (2010) is completely  
24 inapposite as this document is (1) not binding authority on this Court and (2)  
25 regardless, has nothing to do with and makes no mention of public bidding  
26 requirements under Public Contracts Code § 20111 or any other statute.  
27

1 In sum, plaintiff Fair Education Santa Barbara is likely to prevail on the  
2 merits of its Sixth Claim for Relief (for Violation of Public Contracts Code §  
3 20111). The JCCC contract is void and unenforceable.

4 **B. FESB Will Suffer Irreparable Harm In The Absence Of The**  
5 **Requested Relief**

6 In its Motion, FESB demonstrated that it will suffer irreparable harm if the  
7 JCCC Contract is not enjoined. FESB showed that irreparable injury is presumed  
8 by failure to let a contract for public bidding (especially where as here additional  
9 funds will have to be expended under a void and illegal contract). (Motion, pp. 25-  
10 26 (citing, among others, *Kajima v. Los Angeles County Metropolitan Transp.*  
11 *Auth.*, 23 Cal. 4th 305, 316-317 (2000) (“[C]ompetitive bidding statutes are  
12 ‘enacted for the benefit of property holders *and taxpayers*, and not for the benefit  
13 or enrichment of bidders....”) (Emphasis added.))

14 In response, SBUSD and JCCC argue that FESB has not suffered any harm  
15 (irreparable or otherwise), because it does not claim that it, itself, lost out on the  
16 opportunity to bid for the JCCC Contract. They also argue that the authorities cited  
17 by FESB are inapposite because certain of them involve injunctions sought by other  
18 bidders for public contracts – not by taxpayers.<sup>8</sup> This argument is misplaced and is  
19 a distinction without a difference.

20 California’s public bidding statutes are in place to protect among others,  
21 *taxpayers* and prevent improper use of public funds. *Kajima, supra*. The  
22 irreparable injury present in the authorities cited by FESB was the lost opportunity  
23 to have a fair competitive bidding process, which is an injury suffered by not only  
24 other potential bidders, but also the taxpayers who would benefit from such a  
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26 <sup>8</sup> The authorities cited by FESB are *BINL, Inc. v. U.S.*, 106 Fed. Cl. 26, 49  
27 (Fed. Cir. 2012); *Palantir USG, Inc. v. United States*, 129 Fed. Cl. 218, 291 (Fed.  
28 Cir. 2016); and *HP Enterprise Services, LLC v. United States*, 104 Fed. Cl. 230, 245  
(Fed. Cir. 2012).



1 competitive bidding process. Here, due to the lack of competitive public bidding,  
2 taxpayers such as FESB’s members are being forced to support a void and illegal  
3 contract that was brought about through undisclosed and gravely concerning  
4 conflicts of interest. Accordingly, SBUSD’s and JCCC’s efforts to distinguish  
5 these authorities fall flat. *See also Wirin v. Horrall*, 85 Cal.App.2d 497, 504 (Cal.  
6 Ct. App. 1948) (In actions where taxpayer funds are being unlawfully expended, a  
7 plaintiff as a taxpayer has a right to have such illegal acts enjoined).

8 Further, “where a defendant has violated a civil rights statute, [courts] will  
9 presume that the plaintiff has suffered irreparable injury from the fact of the  
10 defendant’s violation.” *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*,  
11 251 F.3d 814, 827 (9th Cir. 2001). Here, FESB has shown SBUSD’s and JCCC’s  
12 discriminatory actions and agenda, as such are evident on the face of the teaching  
13 materials appended to Plaintiff’s Complaint. Thus, irreparable injury from illegal  
14 discrimination also exists here.

15 **C. The Balance Of Hardships Tips Strongly In FESB’s Favor**

16 In its Motion, FESB demonstrated that the balance of hardships tips in its  
17 favor, showing that JCCC will suffer no injury during the injunction as it will not be  
18 providing further services or incurring costs related thereto. FESB, on the other  
19 hand, with void and illegal contracts being fulfilled and teachers and students being  
20 subjected to discriminatory indoctrination, suffers substantial hardship. (Motion,  
21 pp. 27.) JCCC and SBUSD do not claim to have expended any monetary amounts  
22 in expectation of this contract. Instead, they merely argue that “[t]hey have  
23 scheduled future educational services, their employees have prepared, and are  
24 preparing, to perform those services, and the contract amount factors into each of  
25 their budgets.” (JCCC Opp. p. 13.) Rearranging schedules and re-calculating

26 ///  
27 ///

1 budgets pales in comparison to the harm suffered by FESB if JCCC’s indoctrination  
2 continues.<sup>9</sup>

3 To the extent that Defendants argue that monies have been spent or  
4 commitments made based on the JCCC Contract, following the filing of the present  
5 lawsuit, such was done by the Defendants at their own risk and cannot be used by  
6 Defendants as examples of their purported hardship.

7 In sum, the balance of hardships weighs in favor of FESB and the taxpayers  
8 of Santa Barbara.

9 **D. Preliminary Relief Serves The Public Interest**

10 In its Motion, FESB demonstrated that the public interest would be served by  
11 the issuance of an injunction, as further dissipation of public funds under an illegal,  
12 void and deeply flawed, conflict-ridden agreement, for providing services  
13 instructing teachers and students how to discriminate against Caucasians and  
14 Christians, would be halted.

15 SBUSD and JCCC’s only response is that SBUSD would be deprived of  
16 diversity and inclusion services during the interim period while this action proceeds  
17 through trial.

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19 \_\_\_\_\_  
20 <sup>9</sup> JCCC cites to *The Lands Council v. Mcnair*, 2006 WL 5883202 (D. Idaho  
21 Dec. 18, 2006), for the proposition that JCCC’s undertaking of plans in anticipation  
22 of the JCCC Contract requires the balance of hardships to weigh in its favor.  
23 However, *The Lands Council* case does not stand for this proposition. That case  
24 involved an environmental challenge to approval of a timber removal contract,  
25 centered on an alleged failure to adequately consider environmental impacts of the  
26 contract. The Court not only found that plaintiff was unlikely to succeed on the  
27 merits, but that the harm from not going forward with the contracts far outweighed  
any harm to plaintiff, given that timber removal and accompanying fire suppression  
served a great public benefit and would be delayed for another fire season if the  
injunction were granted. There is no doubt that delaying hugely important work on  
fire suppression and prevention of potentially massive wild fires, constitutes  
hardship. Nothing remotely of the sort is occurring in the present lawsuit, however,  
Moreover, even in *The Lands*, the fact that the contracts had already been approved  
and that actions had been taken thereunder, were minor points that scarcely affected  
the Court’s decision, which was actually directed more toward the plaintiff’s failure  
to timely bring the motion for injunction. *Id.* at \*8. To the contrary, FESB’s  
Motion was brought just two months after the JCCC Contract was entered.

1 First, SBUSD could, right now, concede that FESB is correct, comply with  
2 the law and let its diversity training for public bidding to get an appropriate non-  
3 discriminatory organization to provide these services.

4 Second, it is also hardly a public crisis to suspend JCCC’s programming to  
5 determine whether its contract is void and illegal and the services being provided  
6 discriminatory.

7 In the meantime, if SBUSD is really concerned about “narrowing the  
8 achievement gap,” (and to-date, no *credible* proof whatsoever has been offered to  
9 show this has occurred despite years of JCCC’s indoctrination programming and  
10 more than a million dollars spent), it can spend its LCAP funds on non-  
11 discriminatory arts training, which will benefit the students tremendously.<sup>10</sup>

12 Thus, this factor also weighs in favor of FESB.

13 **E. The Court Has Supplemental Jurisdiction Over FESB’s Count VI**  
14 **For Breach Of Public Contract Code § 20111**

15 FESB has fully briefed its positions on Supplemental Jurisdiction in its  
16 Opposition to JCCC’s Motion to Dismiss. (Dkt. No.36.) However, since JCCC  
17 also makes a jurisdictional argument in its Opposition to the Motion for Preliminary  
18 Injunction, FESB provides a reply here as well.

19 JCCC argues that the Court does not have subject matter jurisdiction over  
20 FESB’s California Public Contract Code § 20111 claim, for two reasons. First,  
21 JCCC argues that no supplemental jurisdiction exists over this claim because FESB  
22 has not specifically cited to 28 U.S.C. § 1367 in its Complaint. Second, JCCC  
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25 <sup>10</sup> As explained for example, in “A Parent’s Guide to School Funding –  
26 Learning the Fundamentals About LCFF and LCAP”, arts education boosts  
27 literacy, math skills, and ELA for English Language Learners, who are more likely  
28 to pursue a college degree if they attend an arts-enriched high school. Arts  
education is also linked to improved state test scores among low income students.  
<https://www.familiesinschools.org/wp-content/uploads/2016/05/Parents-Guide-to-School-Funding-LCFF.pdf>.

1 argues that no supplemental jurisdiction exists because this claim is not part of the  
2 same case or controversy as the remaining claims. These arguments fail.

3 First, the existence of supplemental jurisdiction does not hinge on the  
4 talismanic recitation of certain code sections, but rather on the actual facts as pled in  
5 the Complaint. *See Andrus v. Charlestone Stone Prod. Co. Inc.*, 436 U.S. 604, 608  
6 n. 6 (1978) (“Nor does it matter that the complaint does not in so many words assert  
7 § 1331(a) as a basis of jurisdiction, since the facts alleged in it are sufficient to  
8 establish such jurisdiction and the complaint appeared jurisdictionally correct when  
9 filed.”); *see also Radici v. Associated Ins. Companies*, 217 F.3d 737, 740 (9th Cir.  
10 2000) (same). The fact that the Complaint does not specifically reference 28 U.S.C.  
11 § 1367 as a basis for this Court’s jurisdiction over Count VI is of no moment.

12 Second, JCCC’s argument that Count VI does not arise under the same “case  
13 or controversy” as the remaining claims for purposes of supplemental jurisdiction is  
14 not correct. Supplemental jurisdiction is conferred by 28 U.S.C. § 1367(a), which  
15 provides “...in any civil action of which the district courts have original  
16 jurisdiction, the district courts *shall have* supplemental jurisdiction over all other  
17 claims that are so related to claims in the action within such original jurisdiction  
18 that they form part of the same case or controversy under Article III of the United  
19 States Constitution.” 28 U.S.C. § 1367(a) (emphasis added.) “A state law claim is  
20 part of the same case or controversy when it shares a ‘common nucleus of operative  
21 fact’ with the federal claims and the state and federal claims would normally be  
22 tried together.” *Bahrapour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004). In  
23 deciding whether to exercise supplemental jurisdiction, “the ultimate inquiry for the  
24 courts [is] whether the assertion of pendent jurisdiction ‘best accommodate[s] the  
25 values of economy[,] convenience, fairness and comity.” *Executive Software N.  
26 Am., Inc. v. U.S. Dist. Court for the N. Dist. Of Cal.*, 24 F.3d 1545, 1555-56 (9th  
27 Cir. 1994).

1 FESB's Sixth Claim for Relief for Violation of Public Contracts Code §  
2 20111 alleges that SBUSD improperly failed to let its diversity training program for  
3 public bidding *to allow for contracting with a non-discriminatory provider* and,  
4 instead, executed the JCCC Contract despite being made expressly aware of the  
5 discriminatory nature and content of JCCC's teaching and materials and the  
6 numerous conflicts of interest between JCCC and SBUSD. (Complaint ¶¶ 28-31,  
7 64-72.) The facts alleged are inextricably intertwined with FESB's federal  
8 discrimination claims (Counts I and II) of which this Court has original jurisdiction.  
9 SBUSD's failure and refusal to let the JCCC Contract for public bidding in  
10 violation of Public Contracts Code § 20111, despite actual knowledge of JCCC's  
11 discriminatory actions, establishes SBUSD's deliberate indifference to such  
12 discrimination. This is a key factor in the 42 U.S.C. § 2000d (Count I) and 42  
13 U.S.C. § 1983 (Count II) analyses.

14 The claims have the same common nucleus of facts in that all the claims  
15 concern: (1) the JCCC Contract; (2) the unlawful discrimination arising from the  
16 services provided pursuant to the JCCC Contract; (3) whether the JCCC Contract is  
17 void as a matter of law for failure to have been submitted for public bidding and for  
18 being the basis of teachings which illegally discriminate; and (4) the damages  
19 arising from the services provided pursuant to the JCCC Contract.

20 FESB alleges that the contract should have been submitted for public bidding  
21 to allow for contracting with a provider who, unlike JCCC, would provide non-  
22 discriminatory services. (*Id.* ¶¶ 28-31, 66-72.) If for example, SBUSD were to let  
23 the contract for bidding to other providers who violate the same federal statutes, and  
24 contract with such a provider, then SBUSD's conduct in furtherance of § 20111  
25 would bring us right back to square one in violation of the United States  
26 Constitution. Issues, arguments and evidence concerning the letting of a contract  
27 for the particular services in question – unconscious bias training and diversity  
training (especially given what is alleged to have occurred to date), fall squarely

1 within the analysis and arguments to be made in support of the pending federal  
2 claims. And, issues, arguments and evidence concerning the Defendants'  
3 discriminatory conduct in violation of Counts I and II, arise in part, from the  
4 manner in which Defendants' mishandled their obligations pursuant to § 20111,  
5 with SBUSD unilaterally contracting with an organization that discriminates *per se*  
6 in violation of federal and state anti-discrimination law.

7 Consequently, a common nucleus of fact exists between these claims, and  
8 FESB's Count VI for Breach of Public Contracts Code § 20111 is inextricably  
9 intertwined with its federal discrimination claims (Counts I and II). *United Mine*  
10 *Workers of America v. Gibbs*, 383 U.S. 715, 725 (1966) (“[I]f considered without  
11 regard to their federal or state character, a plaintiff's claims are such that he would  
12 ordinarily be expected to try them all in one juridical proceeding, then, assuming  
13 substantiality of the federal issues, there is power in the federal courts to hear the  
14 whole”); *see also e.g. Woodrow v. Satake Family Tr.*, 2006 WL 2092630 (N.D. Cal.  
15 July 27, 2006) (plaintiffs filed fair housing action against defendants for  
16 discrimination and retaliation and court exercised supplemental jurisdiction over  
17 defendant's state law counterclaim for breach of lease and failure to pay rent); *Buttz*  
18 *v. Mohsenin*, 2016 WL 1462135 (N.D. Cal. Apr. 14, 2016) (plaintiff filed FDCPA  
19 and RFDCPA action against defendant and court exercised supplemental  
20 jurisdiction over defendant's breach of contract counterclaim).<sup>11</sup>

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<sup>11</sup> JCCC's citation to *Tranik Enters. Inc. v. AuthenticWatches.com, Inc.*, 2016  
WL 11002491 (C.D.Cal. Oct. 28, 2016) is inapposite. In *Tranik*, the plaintiff's  
(Tranik) claims centered around violations of the Lanham Act and other unfair  
competition laws connected to watches. The defendant (Fulda) attempted to  
counterclaim against the plaintiff for misrepresentations based on a series of  
transactions in which the Fulda purchased watches from Tranik under the belief that  
Tranik was an authorized dealer, suffering harm. *Id.* at \*1-2. The *Tranik* court  
found that these two claims were entirely unrelated: Tranik's claims for unfair  
competition were entirely distinct from the earlier transactions between Tranik and  
Fulda, and thus denied supplemental jurisdiction. *Id.* at \*3.

1 In sum, the assertion of pendent jurisdiction in this case best accommodates  
2 the values of economy, convenience, fairness and comity. *Executive Software N.*  
3 *Am., Inc., supra.* Each of the claims should be tried together.

4 **IV. CONCLUSION**

5 For the foregoing reasons, plaintiff Fair Education Santa Barbara respectfully  
6 requests that a Preliminary Injunction issue to prohibit defendants Santa Barbara  
7 Unified School District and Just Communities Central Coast, Inc. from further  
8 action or expenditure under the JCCC Contract, until a final judgment on the merits  
9 can be entered.

10  
11 Dated: February 11, 2019

Respectfully submitted,  
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12  
13  
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