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9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 FAIR EDUCATION SANTA
13 BARBARA, INC., a 501(c)(3)
14 organization,

15 Plaintiff,

16 v.

17 SANTA BARBARA UNIFIED
18 SCHOOL DISTRICT, a public school
19 district; and JUST COMMUNITIES
20 CENTRAL COAST, INC., a
501(c)(3) organization,

21 Defendants.

2:18-CV-10253-SVW-PLA

**DEFENDANT JUST
COMMUNITIES CENTRAL
COAST, INC.'S OPPOSITION TO
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION**

The Honorable Stephen V. Wilson

Date: January 28, 2019

Time: 1:30 pm

Courtroom: 10A

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1 The Court should deny Plaintiff Fair Education Santa Barbara, Inc. (“FESB”)’s
2 motion because FESB provides no basis for this Court to disrupt the long-standing
3 relationship between Just Communities Central Coast (“JCCC”) and Santa Barbara
4 Unified School District (“SBUSD”) and interfere with ongoing programs JCCC is
5 running within SBUSD. Issuing a preliminary injunction would be improper for two
6 reasons: (1) FESB fails to demonstrate that this Court has supplemental jurisdiction
7 over its state-law claim, the only claim on which FESB seeks preliminary injunctive
8 relief, and (2) FESB fails to satisfy any of the elements for a preliminary injunction.

9 Even if this court did have jurisdiction over the state-law claim, FESB
10 improperly asks this court to *disrupt* the status quo by interrupting a long-standing
11 relationship between Defendants JCCC and SBUSD. Indeed, JCCC and SBUSD have
12 worked together since at least 2005 to provide educational programs about implicit
13 bias and educational equity to teachers, parents, and students alike within the Santa
14 Barbara Unified School District. JCCC’s programs have been called “the most
15 promising vehicle for eliminating racial and ethnic disparities in narrowing the
16 educational achievement gap in the country” and are making a “measurable
17 contribution to Latino student achievement” in SBUSD. Dkt. 17 (Schwartz Decl.) at
18 ¶¶ 11, 5 (citing by a study by the Institute for Democratic Renewal at Claremont
19 Graduate University). Moreover, FESB cannot satisfy the traditional preliminary
20 injunction test because its claims are unlikely to succeed on the merits, FESB will not
21 suffer irreparable harm in the absence of a preliminary injunction, the balance of
22 hardships tips strongly in favor of defendants, and a preliminary injunction is not in
23 the public interest. For at least these reasons, the court should deny FESB’s legally-
24 unfounded motion for preliminary injunction.

25 I. BACKGROUND

26 JCCC is a 501(c)(3) non-profit organization based in Santa Barbara, California.
27 Dkt. 17 at ¶¶ 9, 6. JCCC provides well-regarded and lauded programs focused on
28

1 narrowing the achievement gap impacting students of color and students from other
 2 marginalized groups. *Id.* To that end, JCCC provides implicit bias training to
 3 organizations around the nation, including in New York, Minnesota, Missouri, Texas,
 4 Ohio, and Arizona, as well as in California. *Id.* at ¶ 11.

5 In 2005, JCCC began working with the SBUSD on an educational equity pilot
 6 program. *Id.* at ¶ 5. Following a 2013 program evaluation showing that JCCC had
 7 made a “measurable contribution to Latino student achievement” (*id.*), SBUSD and
 8 JCCC entered into a series of contracts beginning in the 2014–15 academic year to
 9 expand JCCC’s diversity, inclusion, and equity programming in SBUSD. *Id.* The
 10 contract for the current 2018–19 academic year contract was approved by SBUSD’s
 11 school board on October 9, 2018. *Id.* As the Declaration of Jarrod Schwartz, filed in
 12 support of SBUSD’s Opposition to FESB’s Motion for Preliminary Injunction (Dkt.
 13 16) explains, JCCC uses highly-trained instructors and draws from research in a wide
 14 variety of fields, including numerous local researchers, to inform its programming.
 15 Dkt. 17 at ¶¶ 8, 7. JCCC was not asked to bid on any contracts it entered into with
 16 SBUSD or with any other Santa Barbara County school districts. *Id.* at ¶ 5.

17 Plaintiff FESB appears to be an entity created as a vehicle to bring this lawsuit.
 18 On September 21, 2018, FESB’s counsel sent a letter to JCCC on behalf of a group of
 19 “concerned Santa Barbara community members,” then calling themselves “Fair
 20 Communities Education, Inc.,” which warned of possible litigation based on JCCC’s
 21 relationship with SBUSD. *See* Dkt. 9-32 (Ex. GG to Scott Decl. in Support of Prelim
 22 Inj.) at 2–3. In October 2018, Gregory Gandrud, who does not live within SBUSD,¹
 23 started a closed Facebook group named “Fair Education Santa Barbara.” *Fair*
 24 *Education Santa Barbara*, Facebook (Oct. 15, 2018),
 25

26 ¹ Mr. Gandrud has lived in the city of Carpinteria—not Santa Barbara—for more
 27 than 30 years. *See* Gregory Gandrud, *About Gregory Gandrud*,
 28 <http://www.gandrud.org>. Minor residents of Carpinteria attend schools within the
 Carpinteria Unified School District, not SBUSD.

1 <https://www.facebook.com/groups/277208766250704>. On October 15, 2018, a public
 2 FESB Facebook page announced that they were “considering filing a lawsuit against
 3 the Santa Barbara Unified School District for continuing to spend scarce taxpayer
 4 dollars on racist curriculum that teaches students to hate each other and to hate
 5 America.” *Fair Education Santa Barbara* (@FairEducationSantaBarbara), Facebook
 6 (Oct. 15, 2018, 2:17 PM), [https://www.facebook.com/FairEducationSantaBarbara](https://www.facebook.com/FairEducationSantaBarbara/posts/340940259999792)
 7 /posts/340940259999792. Two days later, on October 17, 2018, FESB filed to be
 8 recognized as a 501(c)(3) non-profit organization. *Articles of Incorporation of Fair*
 9 *Education Santa Barbara*, Cal. Sec’y of State (Oct. 17, 2018),
 10 <https://businesssearch.sos.ca.gov/Document/RetrievePDF?Id=04203661-25012887>.

11 The filing identified Mr. Gandrud’s business address—also located in Carpinteria, not
 12 Santa Barbara—as the location of FESB. Notably, FESB does not claim or appear to
 13 be a viable alternative contractor to provide the type of specialized services that JCCC
 14 has provided for SBUSD for the past 14 years.

15 **II. LEGAL STANDARDS**

16 In order to adjudicate a claim, a court must have subject matter jurisdiction.
 17 Any time a court determines “that it lacks subject-matter jurisdiction, the court must
 18 dismiss the action.” Fed. R. Civ. P. 12(h)(3). Federal courts maintain “a continuing
 19 duty” to dismiss cases over which it appears the court lacks jurisdiction. *Pagel v.*
 20 *Dairy Farmers of Am., Inc.*, 986 F. Supp. 2d 1151, 1154 (C.D. Cal. 2013) (Wilson, J.)
 21 (quoting *Augustine v. United States*, 704 F.2d 1074, 1077 (9th Cir. 1983)).

22 A preliminary injunction is “an extraordinary and drastic remedy.” *Lopez v.*
 23 *Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012) (quoting *Mazurek v. Armstrong*, 520
 24 U.S. 968, 972, 117 S. Ct. 1865, 1867 (1997)). It “should not be granted unless the
 25 movant, *by a clear showing*, carries the burden of persuasion.” *Id.* (emphasis in
 26 original).² The “usual function” of a preliminary injunction is “to preserve the status

27 ² Emphasis added throughout except where otherwise indicated.

1 quo ante litem pending a determination of the action on the merits.” *Tanner Motor*
 2 *Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th Cir. 1963).

3 To obtain preliminary injunctive relief, a plaintiff must establish (1) it “is likely
 4 to succeed on the merits,” (2) it “is likely to suffer irreparable harm in the absence of
 5 preliminary relief,” (3) “that the balance of equities tips in [its] favor,” and (4) “that an
 6 injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7,
 7 21, 129 S. Ct. 365, 374 (2008). Alternatively, if the plaintiff makes a showing that
 8 “the balance of hardships tips sharply in the plaintiff’s favor,” the requirement that a
 9 plaintiff must show it “likely to succeed on the merits” is slightly relaxed and the
 10 plaintiff must instead show “serious questions going to the merits.” *See All. for the*
 11 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011). FESB bears the
 12 burden to satisfy each of these elements.

13 **III. ARGUMENT**

14 **A. The Court Has No Subject Matter Jurisdiction Over The State Law** 15 **Claim At Issue In FESB’s Motion**

16 FESB’s request is not properly before this Court. FESB cannot—and does not
 17 even try to—demonstrate that this Court has subject matter jurisdiction over the state
 18 law claim at issue, an alleged “Violation of Public Contract Code § 20111.” Dkt. 8
 19 (FESB’s Notice of Motion) at 1. FESB alleges that the district court has jurisdiction
 20 over its case pursuant to 28 U.S.C. §§ 1331 and 1343. Dkt. 1 (Compl.) at ¶ 9. But
 21 those statutes describe *federal question* subject matter jurisdiction; neither provides
 22 jurisdiction for this court to adjudicate a *state-law claim*. *See* 28 U.S.C. § 1331
 23 (“arising under the Constitution, laws, or treaties of the United States”); 28 U.S.C.
 24 § 1343 (providing jurisdiction over *federal* civil rights claims). Since FESB’s request
 25 for preliminary injunction is based solely on an alleged violation of state law—and
 26 FESB has not even alleged any subject matter jurisdiction that would allow this court
 27 to adjudicate state claims—that alone is enough to deny FESB’s motion. Fed. R. Civ.
 28

1 P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter
2 jurisdiction, the court must dismiss the action.”).

3 Setting aside FESB’s fundamental failure to plead jurisdiction properly, this
4 Court does not have supplemental jurisdiction over this claim. District courts may
5 exercise supplemental jurisdiction only over “all other claims that are so related to
6 [federal] claims in the action . . . that they form part of the same case or controversy”
7 under Article III of the Constitution.³ 28 U.S.C. § 1367(a). A state law claim “is part
8 of the same case or controversy when it shares a ‘common nucleus of operative fact’
9 with the federal claims and the state and federal claims would normally be tried
10 together.” *White v. Deloitte & Touche*, 553 F. App’x 754, 755 (9th Cir. 2014)
11 (quoting *Bahrampour v. Lampert*, 356 F.3d 969, 978 (9th Cir. 2004)).

12 Here, FESB’s federal law claims, *see* Dkt. 1 at Counts I and II, are based on the
13 allegedly discriminatory *content* of JCCC’s educational programming.⁴ By contrast,
14 this motion for preliminary injunction is based solely on Count VI, which challenges
15 the bidding and contracting process conducted by SBUSD. The elements of a claim
16 alleging a violation of California Public Contract Code § 20111 include: 1) contract
17 with school district; 2) contract for more than \$50,000; and 3) whether the contract
18 was required to be put out to bid. Dkt. 1 at ¶¶ 64–72. None of those elements share a
19 “common nucleus of operative fact” with the alleged discriminatory content of
20 JCCC’s programs that form the basis of FESB’s Counts I and II. At best, the contract
21 may be “logically related” or “provide[] background” to the federal claims, but that is
22 not enough to establish supplemental jurisdiction. *See Tranik Enters. Inc. v.*
23 *AuthenticWatches.com, Inc.*, No. 2:16-cv-02931-SVW-JC, 2016 WL 11002491 at *3

24 ³ Subject matter jurisdiction also exists when the citizenship of the parties is
25 sufficiently diverse, *see* 28 U.S.C. § 1332, but because all relevant parties in this case
26 are California residents, there is no basis for diversity jurisdiction. *See* Dkt. 1 at ¶ 12.

27 ⁴ FESB does not raise its state law discrimination claims—Count III, for alleged
28 violation of California Government Code § 11135, and Count IV, for violation of
California Education Code Section § 220—in this motion, and JCCC does not assert
here that they fail the common nucleus of operative fact test.

1 (C.D. Cal. Oct. 28, 2016) (quoting *Burgess v. Omar*, 345 F. Supp. 2d 369, 372
 2 (S.D.N.Y. 2004)) (“[T]he Court finds that the counterclaims do not arise out of the
 3 same transaction or occurrence as the Plaintiff’s original claims, the Defendants are
 4 free to bring their claims against the Plaintiff in a separate action in state court.”).
 5 Even if the Court finds that there is a common nucleus of operative facts, because
 6 FESB does not have standing on the federal discrimination claims,⁵ the court may not
 7 retain supplemental jurisdiction on the state law claims. *See Scott v. Pasadena*
 8 *Unified School Dist.*, 306 F.3d 646, 664 (9th Cir. 2002) (citing *Herman Family*
 9 *Revocable Trust v. Teddy Bear*, 254 F.3d 802, 806 (9th Cir. 2001) (“If the district
 10 court dismisses all federal claims on the merits, it has discretion under § 1367(c) to
 11 adjudicate the remaining claims; if the court dismisses for lack of subject matter
 12 jurisdiction, it has no discretion and must dismiss all claims.”) Supplemental
 13 jurisdiction over Count VI is unavailable, and without it, no subject matter jurisdiction
 14 exists for this court to entertain the motion for preliminary injunction.

15 **B. Issuing A Preliminary Injunction Would Disrupt The Status Quo**

16 Even if this Court had subject matter jurisdiction over the state law claim at
 17 issue, FESB’s motion must be denied because issuing a preliminary injunction would
 18 disrupt the status quo. It is axiomatic that “the usual function of a preliminary
 19 injunction is to *preserve the status quo ante litem* pending a determination of the
 20 action on the merits.” *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F.2d 804, 808 (9th
 21 Cir. 1963). Further, “the status quo to be preserved by a preliminary injunction is
 22 universally defined as ‘the last uncontested status which preceded the pending
 23 controversy.’” *Samica Enters., LLC v. Mail Boxes*, No. CV 06-2800 ODW (CT),
 24 2008 WL 11342744, at *2 (C.D. Cal. Apr. 10, 2008) (quoting *Tanner*, 316 F.2d at
 25 809). As a corollary, the Ninth Circuit also recognizes that preliminary injunctions

26 _____
 27 ⁵ *See* JCCC’s Motion to Dismiss FESB’s Complaint at Section III.B, filed
 28 herewith.

1 should not be granted where the requested result would be to alter the status quo,
2 including by disrupting a long-standing business relationship existing before the
3 lawsuit. *Tanner*, 316 F.2d 804, 811. In the seminal Ninth Circuit decision *Tanner*,
4 the defendant “was, and had been for many years, an Avis licensee, operating an
5 extensive business from which both Tanner and Avis were realizing profits. Tanner
6 was endeavoring to continue to so operate. Avis sought to change that status.”
7 *Tanner*, 316 F.2d 804, 811. The Ninth Circuit reversed the lower court’s order
8 granting Avis a preliminary injunction, finding it was an abuse of discretion to change
9 the status quo—fifteen years of contractual business relations between the parties. *Id.*
10 at 809. As such, a request for a preliminary injunction that goes beyond simply
11 maintaining the status quo (*i.e.*, a mandatory injunction) “is particularly disfavored,
12 and should not be issued unless the facts and law clearly favor the moving party.”
13 *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979).

14 Here, contrary to the well-accepted purpose of a preliminary injunction, FESB’s
15 requested injunction would fundamentally alter the state of affairs for JCCC, SBUSD,
16 and the communities they serve. Indeed, just as in *Tanner*, the status quo is a business
17 relationship between JCCC and SBUSD that spans a minimum of fourteen years.
18 Since at least 2005, JCCC started offering courses teachers, parents, and students as
19 part of a pilot program that was found to have made a “measurable contribution to
20 Latino Student Achievement.” Dkt. 17 at ¶ 5; *see also* Dkt. 9-10 (Ex. J to Scott Decl.
21 in Support of Prelim Inj.). Following this favorable evaluation of JCCC’s offerings,
22 SBUSD and JCCC expanded their professional affiliation by entering into a series of
23 contracts starting in the 2014-2015 school year and continuing today, with the 2018-
24 2019 contract that was approved by the SBUSD board on October 9, 2018. *See* Dkt.
25 17 at ¶ 5. Defendants seek to continue to operate as they have for fourteen years. *See*
26 *id.* FESB seeks to change this status. Indeed, FESB affirms JCCC and SBUSD’s
27 longstanding business relationship, stating “JCCC has been employed by SBUSD

1 *continuously and without interruption* since at least 2012,” and that “JCCC’s
2 services are not remotely ‘temporary.’” Dkt. 8 at 22. Further, FESB acknowledges
3 that Defendants have already begun performing under the renewed contract, as JCCC
4 put on at least one program in November 2018, before the suit was filed. *Id.* at 16.

5 Enjoining the October 9, 2018 contract would put JCCC and SBUSD in a
6 significantly different position than they were in prior to the start of this litigation by
7 upending a long-standing business relationship, dissolving a valid contract, and
8 terminating programs that JCCC has offered for years. A preliminary injunction is not
9 an appropriate vehicle for disrupting the status quo, and FESB has provided no reason
10 why this Court should deviate from established precedent and dissolve the fourteen-
11 year business relationship between JCCC and SBUSD. For this reason alone, FESB’s
12 preliminary injunction should be denied.

13 **C. FESB Is Unlikely To Succeed On The Merits**

14 FESB’s motion should also be denied because FESB is unlikely to succeed on
15 the merits. The basic problem with FESB’s claim under California Public Contract
16 Code § 20111 is that there is no legal requirement for the SBUSD-JCCC contract to
17 be put out for public bid. The face of the statute makes clear that “This section shall
18 not apply to professional services or advice.” Cal. Pub. Con. Code § 20111(d).
19 California courts have recognized that “highly and technically skilled” individuals
20 may be contracted “without competitive bidding” because of the nature of their skill.
21 *City & Cty. of San Francisco v. Boyd*, 17 Cal. 2d 606, 620 (Cal. 1941). When “work
22 requires taste, skill, and technical learning, ability of a high and rare kind,” putting the
23 contract up for bid and accepting the low bid would result in the “least capable and
24 most inexperienced and absolutely unacceptable” level of work. *Miller v. Boyle*, 43
25 Cal. App. 39, 44 (Cal. Ct. App. 1919).

26 Here, the SBUSD-JCCC contract is for “professional services” because the
27 services are provided by trained instructors, most of whom are former educators with
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1 bachelor's degrees or higher. Dkt. 17 at ¶ 8. JCCC's programming requires great
2 care to improve educational outcomes for marginalized students while ensuring that
3 students from historically successful groups are not negatively impacted. *Id.* at ¶ 6.
4 The SBUSD-JCCC contract thus falls squarely within this statutory exemption.

5 California courts are further likely to find that the SBUSD-JCCC contract is
6 exempt from the bidding requirements under § 20111 because there is no advantage to
7 putting the contract out to bid. Courts have held that competitive-bidding
8 requirements do not apply where "the nature of the subject of the contract is such that
9 competitive proposals would be unavailing or would not produce an advantage, and
10 the advertisement for competitive bid would thus be undesirable, impractical, or
11 impossible." *Graydon v. Pasadena Redevelopment Agency*, 104 Cal. App. 3d 631,
12 635–36 (Cal. Ct. App. 1980) ("[T]he competitive bid requirement is to be construed
13 fairly and reasonably with sole reference to the public interest and in light of the
14 purposes to be accomplished."); *Weinstein v. Cty. of Los Angeles*, 237 Cal. App. 4th
15 944, 967 (Cal. Ct. App. 2015) (California courts do not require competitive bidding
16 where it would not "produce an advantage."); *Cobb v. Pasadena City Bd. of Educ.*,
17 134 Cal. App. 2d 93, 95 (Cal. Ct. App. 1955) ("Where competitive proposals do not
18 produce an advantage, a statute requiring competitive bidding does not apply."). In
19 this case, SBUSD would be at a distinct disadvantage if it were required to put the
20 contract out to bid. SBUSD and JCCC engaged in a pilot program *for eight years* that
21 resulted in demonstrative positive results for Santa Barbara students before expanding
22 their relationship. Dkt. 17 at ¶ 5. The current contract only exists because SBUSD
23 has more than a decade of specific, demonstrated, successful outcomes from JCCC's
24 programming. *See id.* Given the unique history of cooperative success between
25 JCCC and SBUSD, there would be no advantage to forcing SBUSD to seek out the
26 lowest bidder.

27 FESB disregards basic precepts of statutory interpretation when it argues that
28

1 the definition of “professional services” in § 20111 is limited to services that require a
2 license, certification, or registration. Dkt. 8 at 25, n.10. Admitting that “professional
3 services or advice” is “not defined in the Public Contract Code,” *id.*, FESB eschews
4 case law interpreting public contracts, and instead oddly resorts to the California
5 Corporations Code, which governs the creation and acts of California corporations.
6 FESB points to a section that reads: “*As used in this part:* (a) ‘Professional services’
7 means any type of professional services that may be lawfully rendered only pursuant
8 to a license, certification, or registration authorized by the Business and Professions
9 Code, the Chiropractic Act, or the Osteopathic Act.” Cal. Corp. Code § 13401(a).
10 Under the plain text of the statute, the definition applies *only to this part* of the
11 California *Corporations* Code—specifically, the part of the code governing a special
12 type of entity: the *professional corporation*. Cal. Corp. Code Part 4 Professional
13 Corporations. FESB cites to no authority to suggest that the legislature intended the
14 definition of “Professional Services” in Part 4 of the Corporations Code should apply
15 to any other part of the Corporations Code, let alone an entirely different Code like the
16 Public Contract Code. And it cites no authority that it would be appropriate for the
17 Court to do so here.

18 The contract is also exempt from bidding requirements for an additional,
19 independent reason: because the programs offered by JCCC are “special services”
20 under § 53060. The statute states that the board of any “district may contract with and
21 employ any persons for the furnishing to the corporation or district special services
22 and advice in financial, economic, accounting, engineering, legal, or administrative
23 matters if such persons are specially trained and experienced and competent to
24 perform the special services required.” Cal. Gov’t Code § 53060. School district
25 contracts are governed by § 53060. *See Serv. Emps. Int’l. Union, Local 1021, AFL-*
26 *CIO v. Cty. of Sonoma*, 227 Cal. App. 4th 1168, 1177 (Cal. Ct. App. 2014)
27 (“Government Code section 53060 is a general statute, applicable to ‘any public or
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1 municipal corporation or district’—a wide variety of public entities”). Thus, so long
2 as the services provided qualify as “special services,” then the no-bid contracts are
3 valid.

4 FESB’s narrow reading of the statute ignores the substantial body of California
5 case law establishing the factors applied by California courts to determine which
6 services qualify as “special services.” The question is not whether the services fall
7 under the enumerated list of “financial, economic, accounting, engineering, legal, or
8 administrative” services as FESB argues, but rather the key inquiry is whether the
9 services are “special.” *See Cal. Sch. Emps. Ass’n v. Sunnyvale Elementary Sch. Dist.*,
10 36 Cal. App. 3d 46, 62, 111 Cal. Rptr. 433, 443 (Ct. App. 1973) (finding that
11 “research and development service” qualified as a “special service” under § 53060).
12 In evaluating whether services are “special” under § 53060, California courts look to
13 several factors, including: “[1] the nature of the services; [2] the necessary
14 qualifications required of a person furnishing the services; and [3] the availability of
15 the service from public sources.” *Serv. Emps. Int’l Union v. Bd. of Trustees*, 47 Cal.
16 App. 4th 1661, 1673 (Cal. Ct. App. 1996) (quoting *Cal. Sch. Emps. Ass’n*, 36 Cal.
17 App. 3d at 60).

18 Here, the services provided by JCCC are “special services” within the meaning
19 of § 53060. Implicit bias training is not a skill readily available in existing school
20 district employees—unlike, for example, janitorial services. *See Cal. Sch. Emp. Ass’n*
21 *v. Willits Unified Sch. Dist. of Mendocino Cty.*, 243 Cal. App. 2d 776, 780 (Cal. Ct.
22 App. 1966). JCCC’s instructors come highly qualified, some with advanced degrees
23 and all with training in relevant areas and high praise and accolades from experts in
24 the field. Dkt. 17 at ¶¶ 5, 7–8. Additionally, the nature of the training sessions—
25 intermittent, rather than weekly or even monthly—make them a poor candidate for a
26 service to be provided by regular school district employees rather than a separately-
27 contracted service. Because JCCC provides “special services” within the meaning of
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1 § 53060, FESB is unlikely to succeed on the merits of its claim.

2 For all the reasons described, FESB has also failed to raise “serious questions
3 going to the merits.” FESB has not made a showing that the balance of harms “tips
4 sharply in the plaintiff’s favor” required to have the more relaxed burden of “serious
5 questions.” *See All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir.
6 2011); *see infra* at 12-13. But even if could make such a showing, it has not raised
7 any serious questions going to the merits for the same reasons that FESB is unlikely to
8 succeed on the merits.

9 **D. FESB Will Not Suffer Irreparable Harm**

10 FESB will not suffer irreparable harm in the absence of a preliminary
11 injunction. The only harm FESB asserts is that public funds will be spent under an
12 allegedly invalid contract. But that hypothetical harm is not “irreparable” because
13 FESB also alleges that any funds spent under the allegedly void contract are
14 recoverable: “under long-standing California law, if a public contract is declared void,
15 a contractor may not be paid for work performed under that contract.” Dkt. 8 at 26
16 (quoting *Amelco Elec. v. City of Thousand Oaks*, 27 Cal. 4th 228, 234 (Cal. 2002)).
17 Thus, FESB’s own allegations demonstrate that none of the harm that FESB alleges,
18 as a group of taxpayers, is irreparable.

19 Moreover, the authority FESB cites for irreparable harm has nothing to do with
20 its alleged injury. FESB claims that federal courts “have repeatedly held that
21 ‘[i]rreparable harm is established by a lost opportunity to fairly compete.’” Dkt. 8 at
22 26 (quoting *BINL, Inc. v. United States*, 106 Fed. Cl. 26, 49 (Fed. Cl. 2012); *Palantir*
23 *USG, Inc. v. United States*, 129 Fed. Cl. 218 (Fed. Cl. 2016); *HP Enter. Servs., LLC v.*
24 *United States*, 104 Fed. Cl. 240 (Fed. Cl. 2012). But these cases are all bid protest
25 lawsuits filed in the Court of Federal Claims where federal contractors challenged
26 either the bid process or the awarding of the contract to another entity, and the
27 irreparable harm was that the plaintiff missed out on a fair opportunity to receive a
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1 government contract. Here, FESB never claims (and presumably cannot claim) that it
2 would have competed for the contract had SBUSD put it out to bid, so it cannot suffer
3 the same type of irreparable harm identified in those Court of Federal Claims cases.

4 **E. The Balance Of Hardships Strongly Favors Defendants**

5 The balance of hardships favors JCCC. Both SBUSD and JCCC have acted and
6 are acting in reliance on this contract: They have scheduled future educational
7 services; their employees have prepared, and are preparing, to perform those services;
8 and the contract amount factors into each of their budgets. Enjoining the contract in
9 advance of fully litigating these claims would place tremendous hardship on JCCC
10 and its employees, who “have already undertaken plans and expended resources in
11 reliance on the contracts.” *The Lands Council v. McNair*, No. CV06-0425-EJL, 2006
12 WL 5883202 at *8 (D. Idaho Dec. 18, 2006). Further, enjoining the contract would
13 deprive SBUSD and its students of the demonstrated benefits from the JCCC
14 programs.

15 FESB, on the other hand, will not suffer any harm in the absence of a
16 preliminary injunction. As discussed above, FESB cannot demonstrate irreparable
17 harm. Similarly, FESB’s assertion that it is concerned with protecting “the teachers
18 and children” of SBUSD from “indoctrination that is dangerous and divisive” is
19 unsupported by fact and divorced from reality. Dkt. 8 at 27. But even if it were true,
20 it has nothing at all to do with the contract award process challenged by this motion.
21 In short, the real consequences that JCCC, SBUSD, and its students will suffer from
22 an injunction are much weightier than those claimed by FESB.

23 **F. A Preliminary Injunction Is Not In The Public Interest**

24 Finally, a preliminary injunction would not be in the public interest. The public
25 “has an interest in enforcement of valid contracts to which the parties have voluntarily
26 agreed.” *Giftango, LLC v. Rosenberg*, 925 F. Supp. 2d 1128, 1141 (D. Or. 2013).
27 Such is the case here. It is not in the public interest for a court to suspend a valid
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1 contract involving a public entity, in advance of full litigation to determine the
2 relevant underlying facts, because to do so would have a chilling effect on private
3 entities' willingness to enter similar contracts in the future. Because FESB is unlikely
4 to succeed on the merits and will not suffer any irreparable harm, the public interest
5 weighs against a preliminary injunction.

6 The public also has an interest in closing the achievement gap and JCCC's
7 programs have a proven track record. There is no public benefit to interrupting what
8 has been called "the most promising vehicle for eliminating racial and ethnic
9 disparities in narrowing the educational achievement gap in the country" and which
10 have been found to have made a "measurable contribution to Latino student
11 achievement." Dkt. 17 at ¶ 5.

12 **IV. Conclusion**

13 For the foregoing reasons, Defendant JCCC respectfully requests that this court
14 deny the motion for preliminary injunction.

15
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Respectfully submitted,
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