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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SANTA BARBARA**

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

18 Plaintiff,

19 vs.

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

25 Defendants.

Case No.: 19CV01875

26 **PLAINTIFF FAIR EDUCATION SANTA**
27 **BARBARA, INC.'S MEMORANDUM OF**
28 **POINTS AND AUTHORITIES IN**
OPPOSITION TO DEFENDANTS JUST
COMMUNITIES CENTRAL COAST,
INC.'S DEMURRER TO SECOND
AMENDED COMPLAINT

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[Assigned for all purposes to Hon. Thomas
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1 **I. INTRODUCTION**

2 Plaintiff Fair Education Santa Barbara (“FESB”) is a 501(c)(3) organization formed to
3 advocate for and to ensure fair, non-discriminatory and inclusive education policies in the Santa
4 Barbara Unified School District (“SBUSD”).¹ This action concerns SBUSD’s no-bid contracts with
5 a non-profit organization called Just Communities Central Coast, Inc., (“JCCC”) for the provision
6 of so-called “unconscious bias” training for teachers and students at a cost to taxpayers of well over
7 \$1,000,000. SBUSD and JCCC are deeply conflicted, with numerous overlapping employees and
8 board members – including school board members that voted to approve JCCC’s contract, who
9 were themselves until very recently employees of JCCC. SBUSD did not let the JCCC contract for
10 public bidding as required by California law – instead rubber stamping it over the objection of
11 many, many parents and community members.

12 To make matters worse, JCCC’s actual teaching curriculum is a radical and discriminatory
13 program, teaching, for example, that “racism” can only be perpetrated by “white people” and that
14 “white people,” “males” and “Christian people” “target” “People of Color,” “females” and “All
15 other [religions].” In teaching its classes, JCCC also physically separates the participants by race
16 to receive differing “instruction.” Plaintiff FESB accordingly filed this lawsuit for violation of
17 Public Contracts Code § 20111 to require public bidding of the contracts with JCCC and, only as
18 to SBUSD, for violation of Government Code § 11135, Education Code §§ 220 and 60044, all of
19 which prohibit SBUSD from discriminating on the basis of race, ethnicity, sex and/or religion,
20 which it does through its contracting with JCCC. JCCC demurs to each claim alleged against it, as
21 well as, strangely, even the claims that are not alleged against it. None of JCCC’s arguments are
22 availing and the demurrer should be overruled for the following reasons:

23 First, JCCC argues that the First Cause of Action fails because its contract with SBUSD is
24 not subject to the public bidding requirements in Public Contract Code § 20111 because JCCC’s
25 services fall under the “professional services” exception in § 20111(d) and the “special services”
26

27 ¹ The abbreviation SBUSD is used throughout this brief to refer collectively to Defendant
28 Santa Barbara Unified School District as well as Defendant Cary Matsuoka, who was sued in his
official capacity as Superintendent only.

1 exception under Government Code § 53060. Neither of these narrowly construed exceptions apply,
2 as JCCC offers neither professional nor special services as those terms are statutorily defined.
3 Instead, JCCC relies on self-serving argument of counsel that it added in the most recent JCCC
4 Contract (which was drafted by the same lawyers who drafted SBUSD’s Demurrers), to argue that
5 JCCC’s services are supposedly “special”. But they are not, and no amount of attorney language
6 written into a contract can change that. Certainly, the Court is not required to, and should not,
7 accept these self-serving legal conclusions as true. The JCCC contracts, providing for SBUSD to
8 pay JCCC hundreds of thousands of dollars, notwithstanding the numerous actual and serious
9 conflicts of interest between the two organizations, are exactly the reason why the public bidding
10 requirements exist in the first place.

11 Second, as to the Second, Third and Fourth Causes of Action pertaining to unlawful
12 discrimination by governmental entities and/or public schools, these causes of action are not alleged
13 against JCCC. Nevertheless, JCCC has demurred to all of these claims. JCCC’s primary argument
14 is, again, that the self-serving platitudes that JCCC itself wrote into certain of its teaching handouts
15 conclusively establish that JCCC and SBUSD do not engage in unlawful discrimination. The Court
16 is not required to accept these legal conclusions as fact.

17 As to the Second Cause of Action for violation of Government Code § 11135, JCCC argues
18 that this claim fails because Plaintiff allegedly failed to exhaust its administrative remedies and
19 because JCCC claims to be exempt from the statute’s proscriptions on unlawful discrimination
20 because the statute should not be applied to Caucasians. However, JCCC never identifies what
21 administrative remedies Plaintiff should have purportedly followed. The one regulation JCCC cites
22 to was repealed three years ago. Further, JCCC and SBUSD are not exempt from Government
23 Code § 11135’s restrictions on unlawful discrimination – the statute applies with full force and
24 effect to discrimination against people of all backgrounds.

25 As to the Third Cause of Action for violation of Education Code § 220, JCCC argues that
26 Plaintiff’s have not alleged any acts of discrimination. This is completely false, as the SAC is
27 replete with such allegations, which are set forth in detail below. Again, JCCC attempts to rely on
28 its own self-serving conclusions in its teaching handouts that it claims conclusively proves that it

1 does not discriminate. These arguments are unavailing for the reasons stated previously.

2 As to the Fourth Cause of Action for violation of Education Code § 60044, JCCC argues
3 that this claim fails as a result of JCCC’s absurd interpretation of the statute, that would essentially
4 render it meaningless.² JCCC’s Demurrer should be overruled in its entirety.

5 **II. ALLEGATIONS IN SAC**

6 **A. The Parties**

7 Plaintiff FESB is an Internal Revenue Code Section 501(c)(3) organization formed to
8 advocate for and ensure fair, non-discriminatory and inclusive education policies in the Santa
9 Barbara Unified School District. (SAC ¶ 12.) FESB is a coalition of approximately 300 members,
10 many of whom have children in SBUSD schools and who are tax payers and residents in Santa
11 Barbara County and in the school district. (*Id.*)

12 Defendant Santa Barbara Unified School District is a public-school district located in Santa
13 Barbara County, California, created and operating under the laws of the State of California.
14 Defendant Cary Matsuoka is the Superintendent of SBUSD and is sued solely in his official
15 capacity. (SAC ¶¶ 13-15.) Defendant Just Communities Central Coast is an Internal Revenue Code
16 Section 501(c)(3) organization that provides purported “unconscious bias” training to school
17 districts and other public entities. (SAC ¶ 16.)

18 **B. JCCC’s No-Bid Contracts With SBUSD**

19 Since approximately 2013, SBUSD has engaged JCCC to provide training and educational
20 programs to SBUSD teachers and students with respect to “diversity, inclusion, and equity.” (SAC
21 ¶ 20.) To date, SBUSD has paid well over \$1,000,000 to JCCC to provide these programs. (SAC
22 ¶ 27.) On or about October 9, 2018, for the 2018-2019 school year, SBUSD entered into a no-bid
23 contract with JCCC for it to provide its so-called “diversity, inclusion and equity” programs for a
24 total cost to taxpayers of \$294,000. (SAC ¶ 27.) This 2018-2019 JCCC Contract was entered into
25

26
27 ² Plaintiff’s Fifth Cause of Action for Declaratory Relief seeks a declaration from the Court that
28 SBUSD has violated the foregoing statutes enumerated in Causes of Action 1 through 4. Therefore,
to the extent the Court overrules JCCC’s demurrer to Causes of Action 1 through 4, it should
overrule JCCC’s demurrer to Cause of Action No. 5.

1 over opposition from community members, who pointed out the many, many conflicts of interest
2 between SBUSD and JCCC and questioned the propriety of entering into this contract on a no-bid
3 basis. (SAC ¶ 41.) These conflicts of interest include among others:

- 4 a. Former SBUSD Board member, Ismael Ulloa, who voted to approve the 2018-2019 JCCC
5 Contract, was a paid teacher for JCCC in 2016;
- 6 b. Annette Cordero was a two-term member of the SBUSD School Board, serving from 2004
7 through 2012 and is currently a member of JCCC’s Board of Directors;
- 8 c. Dave Cash was the Superintendent of SBUSD from 2011 through 2016 caused the Board
9 to approve numerous of JCCC’s prior contracts with the district. Dr. Cash was, until only
10 several months ago, a member of JCCC’s Board of Directors.
- 11 d. Current SBUSD Assistant Superintendent of Secondary Education, Shawn Carey, was an
12 instructor for JCCC and a major promoter of JCCC within the district;
- 13 e. Current Assistant Superintendent and Head of Student Services, Fran Wageneck, is one
14 of the original founders of JCCC and designed JCCC’s curriculum;

15 (SAC ¶ 53(a)-(i).) None of these conflicts were disclosed prior to the SBUSD Board’s approval of
16 its 2018-2019 contract. (SAC ¶ 54.) FESB filed a lawsuit regarding JCCC’s 2018-2019 Contract
17 alleging, among other things, that the contract must be let for public bidding pursuant to Public
18 Contracts Code § 20111.

19 While this lawsuit was pending, SBUSD and JCCC rushed through with only the bare
20 minimum public notice an approval of a new contract between SBUSD and JCCC for the 2019-
21 2020 School year, this time costing the taxpayers another \$258,115. (SAC ¶ 28, Ex. B.) This time,
22 however, SBUSD and JCCC’s lawyers inserted a host of self-serving legal conclusions to attempt
23 an end run around California’s public bidding requirements – parroting back the legal language that
24 is contained in certain otherwise inapplicable exceptions to the public bidding requirement as
25 purported “findings of fact.” (SAC, Ex. B.)

26 **C. JCCC’s Discriminatory And Divisive Programming**

27 While JCCC purports to provide “diversity, inclusion and equity” programs, its actual
28 curriculum and programs are anything but. JCCC’s actual programming is a radical, exclusionary
and discriminatory curriculum, masquerading under the guise of “advancing justice” and making

1 communities “more inclusive and just for all people.” JCCC’s curriculum and written materials
2 attempt to indoctrinate staff and students with a warped view of the world where racism can only
3 be perpetrated by “white people” and where the success of students in so-called “privileged” groups
4 is due solely to their “unearned access to resources . . .” (SAC ¶ 32.)

5 JCCC’s teaching materials contain among many others, the following direct quotes:

- 6 a. “Oppression” is “[a] system that benefits some groups (often called ‘privileged groups’) and disadvantages other groups (often called ‘target groups’).” (SAC, Ex. C, p. 15.)
- 7
8 b. “Privileged Groups” include “Men,” “White People,” “Christian People,” and “Wealthy
9 People,” and “Target Groups” include “Women,” “People of Color,” and “Working Class
10 & Poor.” (SAC, Ex. C, p. 17.)
- 11 c. “Racism” is “[a] system of oppression based on race that privileges white people and
12 targets people of color.” (SAC, Ex. C, p. 19.)
- 13 d. JCCC’s materials define “Religious Oppression” as “Christian People” targeting “All
14 Others” and “Sexism” as “Men” targeting “Women.” (SAC, Ex. C, p. 15.)

15 Utilizing this ideological framework, JCCC physically separates participants during the
16 actual workshops and training sessions, into different racial groups, requiring all individuals that
17 JCCC perceives to be “white” to be segregated in a separate room to receive instruction that differs
18 from all perceived “non-white” participants. In these racially segregated sessions, the “white”
19 participants are instructed that, whether they are conscious of it or not, all “white people” are racist
20 and collude to promote or perpetuate racism against non-whites. (SAC ¶ 35.)

21 **III. LEGAL STANDARD**

22 Generally, “a demurrer tests the sufficiency of the plaintiff’s complaint, *i.e.*, whether it
23 states facts sufficient to constitute a cause of action upon which relief may be based.” *McKell v.*
24 *Washington Mutual, Inc.*, 142 Cal. App. 4th 1457, 1469 (2006). In determining whether the
25 complaint states facts sufficient to constitute a cause of action, the Court may consider all material
26 facts pleaded in the complaint and those arising by reasonable implication therefrom. *Id.* Further,
27 for the purpose of testing the sufficiency of the cause of action, the demurrer admits the truth of all
28 material facts properly pleaded. *Aubry v. Tri-City Hosp. Dist.*, 2 Cal.4th 962, 966–967 (1992) ;

1 *Serrano v. Priest*, 5 Cal.3d 584, 591 (1971); *Adelman v. Associated Int'l Ins. Co.*, 90 Cal.App.4th
2 352, 359 (2001) . The Court should not sustain the demurrer without leave to amend if the
3 complaint, liberally construed, can state a cause of action under any theory or if there is a reasonable
4 possibility the defect can be cured by amendment. *Id.*

5 **IV. ARGUMENT**

6 **A. The First Cause Of Action For Violation Of Public Contracts Code § 20111**
7 **States A Valid Cause Of Action**

8 California Public Contract Code § 20111 states:

9 The governing board of any school district, in accordance with any requirement
10 established by that governing board pursuant to subdivision (a) of Section 2000, shall
11 let any contracts involving an expenditure of more than fifty thousand dollars
(\$50,000) for any of the following: [...] (B) Services, except construction services.

12 Cal. Pub. Con. Code § 20111. Plaintiff's First Cause of Action for Violation of Public Contracts
13 Code § 20111 alleges that the JCCC Contract was not "let" for public bidding and is thus void and
14 unenforceable as a matter of law and that, due to the numerous actual and potential conflicts of
15 interest between SBUSD and JCCC, this is exactly the scenario that public bidding requirements
16 were designed to address. JCCC does not dispute that the JCCC Contract was not let for public
17 bidding and does not dispute that, if it is subject to Public Contract Code § 20111, it is void and
18 unenforceable. Instead, JCCC argues that it is exempt from the public bidding requirements
19 because the JCCC Contract calls for the provision of (1) "professional services or advice" which
20 JCCC claims are excepted under § 20111(d) and (2) so-called "special services," which are exempt
21 from the public bidding requirements of Public Contracts Code § 20111. Neither of these
22 exceptions apply.

23 **1. The JCCC Contract Is Not For "Professional Services"**

24 Public Contracts Code § 20111(d) states that the general public bidding requirements do
25 "not apply to professional services or advice, insurance services, or any other purchase or service
26 otherwise exempt from this section, or to any work done by day labor or by force account pursuant
27 to Section 20114." JCCC argues that the JCCC Contract is one for "professional services," under
28 this exception. JCCC is wrong and the authorities it cites are inapposite.

1 The term “professional services” is not defined anywhere in the Public Contracts Code or
2 in any interpretive case law. However, the term is elsewhere statutorily defined as “any type of
3 professional services that may be lawfully rendered *only* pursuant to a license, certification, or
4 registration authorized by the Business and Professions Code, the Chiropractic Act, or the
5 Osteopathic Act.” Cal. Corp. Code § 13401(a) (Emphasis added). JCCC’s “unconscious bias”
6 training does not require any such licensing, certification or registration in order to be lawfully
7 performed. Thus, JCCC’s services are not remotely “professional services.” (SAC ¶ 50.)

8 The authorities cited by JCCC are completely inapposite as well. In support of its argument,
9 JCCC cites to *City & Cty. Of San Francisco v. Boyd* (1941) 17 Cal.2d 606. However, this case did
10 not involve Public Contracts Code § 20111 in any respect, but rather an unrelated municipal
11 ordinance. Further, the services at issue in that case were for civil engineering, which is a
12 “professional service” expressly falling under the definition set forth in Corporations Code §
13 13401(a). *Id.* at 609. Likewise, the case of *Miller v. Boyle* (1919) 43 Cal.App.39 cited by JCCC
14 did not involve Public Contracts Code § 20111 and the services at issue were for a professional
15 architect, which is also a “professional service” expressly falling within the definition in
16 Corporations Code § 13401(a). JCCC has pointed to no authority substantiating its claim that
17 “unconscious bias” training constitutes a “professional service.”

18 JCCC also relies on self-serving conclusory statements that JCCC itself put in its own
19 contract, touting its experience and skill, and argues that the Court must accept these representations
20 as true because they are in a document attached to the SAC. (Demurrer p. 5-6.) This is an absurd
21 argument. The Court is not required to accept JCCC’s own self-serving legal conclusions as fact.
22 *Herman v. Los Angeles County Metropolitan Transportation Authority* (1999) 71 Cal.App.4th 819,
23 823 fn. 5 (on demurrer, Court need not accept as true legal conclusions contained in materials
24 attached to complaint).

25 2. The JCCC Contract Is Not For “Special Services”

26 JCCC argues that its services are exempt from the public bidding requirements because they
27 constitute “special services” under Government Code § 53060, which are excluded from the
28 purview of the Public Contracts Code § 20111. Government Code § 53060, however, expressly

1 limits “special services” to “services and advice in financial, economic, accounting, engineering,
2 legal, or administrative matters if such persons are specially trained and experienced and competent
3 to perform the special services required.” Cal. Gov. Code § 53060.

4 Initially, JCCC does not even argue, let alone demonstrate, that its services are within the
5 realm of “financial, economic, accounting, engineering, legal or administrative matters...” as
6 required by Government Code § 53060. Instead, JCCC provides “unconscious bias” training.
7 (SAC, Exs. A and B.) On this ground alone, Government Code § 53060 is inapplicable.

8 Assuming for purposes of argument only that JCCC’s services are somehow financial,
9 economic, accounting, engineering, legal or administrative (and they clearly are not), the services
10 JCCC provides are not “special services”. The “special services” standard as applicable to the
11 statute, “is the result of a composite consideration of various factors [including] those which relate
12 to the nature of the services required to the subject matter thereof, to the qualifications of the person
13 capable of furnishing them, to their availability from public sources and to the temporary basis of
14 the employment through which they are obtained.” *Jaynes v. Stockton*, 193 Cal. App. 2d 47, 51-52
15 (1961) (internal citations omitted) (finding that legal services offered by a private law firm were
16 not “special services” as the same legal services were equally available from the local district
17 attorney’s office).

18 “The term ‘special’ has been defined [to include] unique, unusual [] out of the ordinary
19 [and] ‘extraordinary’ ...” *Jaynes, supra*, 194 Cal. App. 2d at 51 (internal citations omitted). As
20 alleged in the SAC, there is nothing unique, unusual or extraordinary about the “unconscious bias”
21 training services JCCC provides. The SAC identifies at least four other *local* providers of such
22 services in the Santa Barbara vicinity – several of which are public entities. (SAC ¶ 6.)

23 Courts in other states interpreting similar “special services” exceptions to competitive
24 bidding requirements have even found that the following *do not* constitute “special services”:
25 installation and maintenance of computer mainframe central processing units³, security services to
26
27

28 ³ *Pacificorp Capital, Inc. v. City of New York*, 741 F. Supp. 481 (S.D. N.Y. 1990)

1 a water processing plant⁴, archeological services to preserve a historical site⁵, and conducting the
2 sale of advertising space at a public airport.⁶ This is because of the numerous other individuals and
3 entities who can provide the same or similar such services. “Special services” providers (for whom
4 outside bidding is not required) are, thus, limited to a specific subset of professionals who provide
5 unique, specialized financial, economic, accounting, engineering, legal, or administrative services
6 not otherwise available through public sources. Cal. Gov. Code § 53060; *Jaynes, supra*, 193 Cal.
7 App. 2d at 51-52. The services offered by JCCC do not fit within this category.

8 Additionally, JCCC’s services require no special licensing, registration, certification or
9 qualifications prior to their provision, and JCCC cites to none. JCCC again points to it’s the self-
10 serving legal conclusions that it drafted into its own contract to attempt an end run around the public
11 bidding requirements. The Court is not obligated to accept these self-serving statements as true for
12 purposes of this demurrer.⁷

13 Finally, JCCC’s services are not remotely “temporary”. While the JCCC Contract is for a
14 period of one year (which in and of itself is not “temporary”), JCCC has been employed by SBUSD
15 continuously and without interruption since at least 2012. (SAC ¶ 4.) Thus, JCCC’s services have
16 been anything but “temporary.”

17 **3. The JCCC Contract Is Exactly The Type Of Contract That Should Be**
18 **Let For Public Bidding Given The Numerous Conflicts Of Interest**

19 JCCC finally argues that requiring SBUSD to let the JCCC Contract for public bidding
20 would “frustrate the purpose” of the public bidding requirements. The exact opposite is true.
21 “Because of the potential for abuse arising from deviations from strict adherence to standards which
22

23 ⁴ *Layman’s Security Company v. Water Works And Sewer Board of the City of Prichard*, 547 So.
24 2d 533 (Ala. 1989) (overruled on other grounds by *Ex Parte Ballew*, 771 So. 2d 1040 (Ala. 2000).

25 ⁵ *Klinger v. City of Fayetteville*, 293 Ark. 128 (1987)

26 ⁶ *Transportation Displays, Inc. v. City of New Orleans*, 346 So. 2d 359 (La. Ct. App. 4th Cir. 1977).

27 ⁷ SBUSD argues that the self-serving statements that SBUSD and JCCC colluded to insert into their
28 contract to get around the public bidding requirements must be accepted as true because they are
part of the administrative record in this case. However, these are not “facts” – they are legal
conclusions. The Court and/or fact finder will be the ultimate arbiter of the facts in this case, not
SBUSD.

1 promote these public benefits, the letting of public contracts universally receives close judicial
2 scrutiny and contracts awarded without strict compliance with bidding requirements will be set
3 aside. [...] The importance of maintaining integrity in government and the ease with which policy
4 goals underlying the requirement for open competitive bidding may be surreptitiously undercut,
5 mandate strict compliance with bidding requirements.” *MCM Construction, Inc. v. City and County*
6 *of San Francisco*, 66 Cal. App. 4th 359, 369 (1998).⁸ The SAC alleges numerous conflicts of
7 interest between JCCC and SBUSD – including that sitting SBUSD School Board members that
8 voted to approve the contract were former paid employees of JCCC, among many others. (SAC ¶
9 53(a)-(i).) These conflicts are exactly the reason the public bidding requirement exists in the first
10 place.

11 **B. Plaintiff’s Second Through Fourth Causes Of Action Relating To Unlawful**
12 **Discrimination Are Not Alleged Against JCCC And State Valid Claims**

13 As an initial matter, JCCC’s Demurrer to the Second, Third and Fourth Causes of Action is
14 non-sensical as not one of these causes of action is alleged against JCCC. These Causes of Action
15 relate to anti-discrimination statutes that regulate the conduct of governmental entities and public
16 schools. These claims were not brought against JCCC. Nevertheless, JCCC demurs to these claims.
17 The Court can stop its analysis of JCCC’s Demurrer as to the Second, Third and Fourth Causes of
18 Action there, because there is no relief that JCCC could receive through its Demurrer on these
19 claims – it is already not a party to any of them. An order on JCCC’s Demurrer would be a pointless
20 (and time consuming) exercise for the Court.

21 Additionally, as an argument raised by JCCC common to all of these causes of action, JCCC
22 claims that Plaintiff cannot make any allegations of discrimination because certain of JCCC’s
23 teaching materials that are attached to the SAC contain self-serving, conclusory statements written
24 by JCCC itself that state such platitudes as “Our work is about issues, not about guilt, blame, or
25 shame” or “[a]t some time in our lives, all of us will have the experience of being the target of
26

27
28 ⁸ *Marshall v. Pasadena Unified School Dist.*, 119 Cal. App. 4th 1241, 1256 (2004) (“...any exception to competitive bidding requirements should be strictly construed.”)

1 oppression, as well as the experience of privilege.” (Demurrer, pp. 9-11.) JCCC argues that,
2 because these materials are attached to the Complaint, the Court is required to accept these
3 conclusory platitudes as true and reject any allegations of unlawful discrimination that contradict
4 them. The Court is not required to accept self-serving legal conclusions in exhibits to a pleading as
5 true. *Herman* (1999) 71 Cal.App.4th 819, 823 fn. 5.

6 Further, none of the self-serving language quoted by JCCC in its Demurrer actually
7 contradicts the allegations of blatant discriminatory language and programming, much of which is
8 quoted verbatim from JCCC’s own materials. Whether or not JCCC’s programming is unlawfully
9 discriminatory is a question of fact not properly resolved at the pleading stage. Accordingly, this
10 argument by JCCC should be given short shrift.

11 **1. The Second Cause Of Action For Violation Of Government Code §**
12 **11135 States A Valid Cause Of Action**

13 JCCC argues that Plaintiff’s Second Cause of Action for violation of Government Code §
14 11135 fails because (1) Plaintiff has not alleged any person was subjected to intentional
15 discrimination, (2) Plaintiff has not exhausted its administrative remedies (without identifying
16 exactly what administrative remedies Plaintiff should have pursued) and (3) JCCC is allowed to
17 discriminate on the basis of race, sex and religion because, to hold otherwise, would frustrate the
18 purpose of the anti-discrimination statutes.

19 First, the SAC contains detailed allegations that both students and teachers have suffered
20 discrimination vis a vis JCCC’s programming. The SAC alleges that JCCC’s programming teaches
21 staff and students that “white people,” “men,” and “Christian People” are oppressors and “target”
22 “people of color,” “women,” and “all other [religions].” (SAC ¶ 32.) The SAC alleges that JCCC
23 teaches staff and students that only “white people” can be “racist,” and that all “white people” are
24 “racist” whether they are conscious of it or not. (SAC ¶ 53, Ex. C, pp. 15, 17, 19.) The SAC also
25 alleges that JCCC physically separates participants in its programs into different racial groups and
26 provides them differing instruction. (SAC ¶ 35.) The SAC clearly alleges that individuals were
27 subjected to discrimination by SBUSD through its contracting with JCCC.

28 Second, as to JCCC’s argument that Plaintiff has not exhausted its administrative remedies,

1 JCCC does not identify exactly what “administrative remedies” Plaintiff should have pursued prior
2 to filing this action. JCCC cites to 22 Cal. Code Regs. § 98003 as the administrative remedy
3 Plaintiff purportedly should have sought prior to filing suit. However, this regulation was repealed
4 in 2016. If the law does not expressly provide for a proceeding of some nature before an
5 administrative body with respect to the claims asserted, the defense of failure to exhaust
6 administrative remedies is inapplicable. *Henry George Sch. Of Soc. Sci of San Diego v. San Diego*
7 *Unified Sch. Dist.* (1960) 183 Cal.App.2d 82, 86-87 (“[N]o authority has been cited, and we have
8 found none, that applies the doctrine of exhaustion of administrative remedy to any case where no
9 specific remedy is provided, permitted or authorized by statute or by rule of the administrative
10 agency involved.”).⁹ Additionally, Plaintiff has satisfied any administrative procedures, as its SAC
11 contains detailed allegations of numerous petitions to the SBUSD School Board and Superintendent
12 Matsuoka at board meetings notifying them of the discriminatory nature and content of the JCCC
13 programming and with no action taken. (SAC ¶¶ 41-45.)

14 Third, JCCC argues that it and SBUSD are “exempt” from the anti-discrimination
15 prohibitions in Government Code § 11135 under Government Code § 11139, which states that the
16 article “shall not be interpreted in a manner that would frustrate its purpose” or “in a manner that
17 would undermine lawful programs which benefit members of the protected bases described in
18 Section 11135.” Cal. Gov. Code § 11139. There is nothing in this statute that “exempts” JCCC
19 from the anti-discrimination statutes and Plaintiff is not urging any interpretation of the statute that
20 would frustrate its purposes. Plaintiff is merely asking that SBUSD not intentionally discriminate
21 against, belittle and denigrate its teachers and students who are Caucasian, Christian or Male –
22 which is exactly what Government Code § 11135 mandates. Prohibiting discrimination on the basis
23 of race, sex and religion *further*s the purpose of Section 11135.

24
25
26
27 ⁹ See also *Bernstein v. Smutz* (1947) 83 Cal.App.2d 108, 115 (“In all of the cases in this state
28 in which it has been held that a party had not exhausted his administrative remedies and therefore
was not entitled to relief by the court, provision was made in the governing law for a proceeding
of some nature before an administrative body which the party had not pursued.”)

1 **C. The Third Cause Of Action For Violation Of Education Code § 201 and 220**
2 **States A Valid Claim**

3 Education Code § 220 states that:

4 No person shall be subjected to discrimination on the basis of disability, gender,
5 gender identity, gender express, nationality, race or ethnicity, religion, sexual
6 orientation, or any other characteristic that is contained in the definition of hate
7 crimes set forth in Section 422.55 of the Penal Code, including immigration status
8 in any program or activity conducted by an education institution that receives, or
9 benefits from, state financial assistance, or enrolls pupils who receive state student
10 financial aid.

11 To prevail on a claim under this section, the plaintiff must prove the following elements: “(1) he or
12 she suffered severe, pervasive and offensive harassment, that effectively deprived plaintiff of the
13 right of equal access to educational benefits and opportunities; (2) the school district had actual
14 knowledge of that harassment; and (3) the school district acted with deliberate indifference in the
15 face of such knowledge.” *Donovan v. Poway Unified Sch. Dist.*, 167 Cal. App. 4th 567, 579 (2008).
16 JCCC does not dispute that the SAC satisfies elements (2) and (3). Instead, JCCC argues that the
17 SAC does not sufficiently allege element (1). However, as stated above, the SAC contains detailed
18 allegations on this element.

19 The SAC alleges that JCCC’s instructional materials teach that “Men,” “White People,” and
20 “Christian People” are so-called “Privileged Groups” and actively “target” “Women,” “People of
21 Color,” and “All Others [as to religion].” (SAC ¶ 34, Ex. C, p. 15.) The SAC further alleges that
22 JCCC teaches that the term “racism” is “[a] system of oppression based on race that privileges white
23 people and targets people of color” – in other words, only “white people” can be racist. (SAC ¶ 34,
24 Ex. C, p. 17.) JCCC’s materials further define “Religious Oppression” and “Christian People”
25 targeting “All Others” and “Sexism” as “Men” targeting “Women.” (SAC ¶ 34, Ex. C, p. 15.) The
26 SAC further alleges that, in its actual programming, JCCC physically separates the participants by
27 race, requiring all “white people” to be segregated into a separate group from the “people of color”
28 and to receive differing instruction and differing treatment during the programming. (SAC ¶ 35.)
Specifically, the segregated “white people” are instructed that “whether they are conscious of it or
not, all ‘white people’ are racist and collude to promote or perpetuate racism against non-whites.”

1 (SAC ¶ 36.) The SAC alleges that, if any Caucasian person voices any question or dissent to
2 JCCC's programming, he or she is labeled by JCCC as a racist. (SAC ¶ 36.) Segregating
3 participants by race to receive differing instruction and differing treatment is per se unlawful
4 discrimination.

5 JCCC again relies on its own self-serving, conclusory handouts that it claims the Court must
6 accept as true to demonstrate that JCCC is not discriminatory. However, as stated above, the Court
7 is not required to accept the truth of these self-serving materials and, regardless, JCCC's materials
8 do not negate in any way the discriminatory teaching and conduct alleged in the SAC. *See Herman,*
9 *supra*, 71 Cal.App.4th at 823. Accordingly, Plaintiff's Second Cause of Action for Violation of
10 Education Code § 220 states a valid claim.

11 **D. Plaintiff's Fourth Cause Of Action For Violation Of Education Code § 60044**
12 **States A Valid Claim**

13 Education Code § 60044 states that: A governing board shall not adopt any instructional
14 materials for use in the schools that, in its determination, contain:

15 (a) Any matter reflecting adversely upon persons on the basis of race or ethnicity,
16 gender, religion, disability, nationality, or sexual orientation, occupation, or
because of a characteristic listed in [Education Code] Section 220.

17 JCCC incorrectly argues that Plaintiff cannot state a claim under this statute.

18 First, JCCC argues that Education Code § 60044 only prohibits the adoption of
19 discriminatory instructional materials if the governing board first makes a determination (in its sole
20 discretion) that the materials are, in fact, discriminatory. This non-sensical, recursive reading of
21 the statute would render it completely meaningless. Under JCCC's reading of the statute, any
22 school board would be able to adopt discriminatory instructional materials as long it made some
23 perfunctory "determination" that the materials are not discriminatory. However, a school board's
24 exercise of discretion in making its "determination" under Education Code § 60044 must not be
25 applied in an "arbitrary manner toward those [against whom the materials are discriminatory]." *See*
26 *California Parents for Equalization of Educational Materials v. Noonan* 600 F.Supp.2d 1088, 1109
27 (E.D. Cal. 2009). Thus, JCCC's reading of the statute is incorrect and would result in an absurdity.

1 Regardless, whether the SBUSD School Board made a determination as to the discriminatory nature
2 of JCCC’s programming is ultimately a question of fact that cannot be resolved at the pleading
3 stage. It is sufficient that Plaintiff has alleged it. (SAC ¶¶ 78-81.)

4 Second, JCCC argues that Plaintiff has not provided “a single example of any fact that
5 reflects adversely on Caucasian, male and/or Christian people.” This is simply not true. The SAC
6 is replete with such examples, including without limitation, JCCC’s IEE program that teaches that
7 “Whites,” “Christians,” and “Males” are “oppressors” and “target” “People of Color,” all other
8 religions and women, respectively. (SAC, Ex. C, p. 15.) JCCC’s materials that define “racism” as
9 “[a] system of oppression based on race that privileges white people and targets people of color.”
10 (SAC, Ex. C, p. 17.) JCCC’s materials further define “Religious Oppression” as “Christian People”
11 targeting “All Others” and “Sexism” as “Men” targeting “Women.” (SAC, Ex. C, p. 15.) JCCC’s
12 racially segregates sessions, wherein the “white” participants are instructed that, whether they are
13 conscious of it or not, all “white people” are racist and collude to promote or perpetuate racism
14 against non-whites. (SAC ¶ 35.)¹⁰

15 **V. CONCLUSION**

16 Plaintiff respectfully requests that the Court overrule JCCC’s Demurrer in its entirety.

17 Dated: September 4, 2019

EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP

20 By: /s/ Peter Scott
Eric P. Early
Peter Scott
Attorneys for Plaintiff
FAIR EDUCATION SANTA BARBARA, INC.

25 _____
26 ¹⁰ Plaintiff’s Fifth Cause of Action seeks a declaratory ruling that SBUSD and/or JCCC have
27 violated the statutes set forth in Causes of Action Nos. 1 through 4. Therefore, because JCCC’s
28 Demurrers to Causes of Action No. 1 through 4 should be overruled, its Demurrer to Cause of
Action No. 5 should be overruled as well on the same grounds.

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California; I am over the age of 18
4 and not a party to the within action; my business address is 6420 Wilshire Boulevard, 17th Floor,
Los Angeles, California 90048.

5 On September 4, 2019, I served the foregoing document(s) described as: **PLAINTIFF**
6 **FAIR EDUCATION SANTA BARBARA, INC.’S MEMORANDUM OF POINTS AND**
7 **AUTHORITIES IN OPPOSITION TO DEFENDANTS JUST COMMUNITIES CENTRAL**
COAST, INC.’S DEMURRER TO SECOND AMENDED COMPLAINT on the interested
parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

8 Sarah E. Piepmeier, Esq.
9 Kirkland & Ellis LLP
10 555 California St,
11 San Francisco, CA 94104
12 Phone Number: (415) 439-1976
13 Fax Number: (415) 439-1500
14 Email: sarah.piepmeier@kirkland.com
15 *Attorneys for Defendant JUST*
16 **COMMUNITIES CENTRAL COAST, INC.**

8 Joseph M. Sholder, Esq.
9 Griffith & Thornburgh, LLP,
10 8 E Figueroa St 3rd Fl,
11 Santa Barbara, CA 93101
12 Phone Number: (805) 965-5131
13 Fax Number: (805) 965-6751
14 Email: sholder@g-tlaw.com
15 *Attorneys for Defendants*
16 **SANTA BARBARA UNIFIED SCHOOL**
17 **DISTRICT and CARY MATSUOKA**

- 14 BY MAIL: I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. I served the following document(s) by enclosing them in an envelope and placing the envelope for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business at our Firm’s office address in Los Angeles, California within the United States Postal Service in a sealed envelope with postage fully prepaid. Service made pursuant to this paragraph, upon motion of a party served, shall be presumed invalid if the postal cancellation date of postage meter date on the envelope is more than one day after the date of deposit for mailing contained in this affidavit.
- 19 BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the above named addressee(s).
- 21 **BY ELECTRONIC SERVICE:** Via electronic transmission, by use of the One Legal electronic filing platform.
- 22 BY E-MAIL: I caused to be e-mailed a true copy to the e-mail addresses listed above.

23 Executed on September 4, 2019, at Los Angeles, California.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing
25 is true and correct.

26 */s/ Robie Ann Atienza-Jones*

27 **ROBIE ANN ATIENZA-JONES**