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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

**PLAINTIFF FAIR EDUCATION SANTA
BARBARA, INC.'S OPPOSITION TO
DEFENDANTS' SPECIAL MOTION TO
STRIKE**

[Declarations of Peter D. Scott, Sheridan
Rosenberg, Kati Hedden, Greg Gandrud, and
Greg Hammel in Support of Fair Education
Santa Barbara's Opposition, Filed and Served
Concurrently Herewith]

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1 **I. INTRODUCTION**

2 Plaintiff Fair Education Santa Barbara (“Plaintiff” or “FESB”) is a 501(c)(3) organization
3 formed to advocate for and to ensure fair, non-discriminatory and inclusive education policies in
4 the Santa Barbara Unified School District (“SBUSD”)¹. FESB advocates for Santa Barbara
5 citizens of all races, creeds, colors and sexual orientation. FESB includes as its members several
6 hundred concerned Santa Barbara citizens who are in many instances, outraged by the District’s
7 discriminatory indoctrination programming which lies at the heart of the instant lawsuit.

8 FESB has been instrumental in bringing to light a child sexual abuse scandal at SBUSD’s
9 MAD Academy (which like JCCC involves another unsupervised non-profit group operating out
10 school facilities) and causing the District to repair and replace multiple unsafe, dangerous and in
11 certain instances, dreadful facilities within the District.

12 This case concerns SBUSD’s adoption of a radical and discriminatory “unconscious bias”
13 program provided by Just Communities Central Coast, Inc. JCCC’s programming teaches, for
14 example, that “racism” can only be perpetrated by “white people” and that “white people,”
15 “males” and “Christian people” “target” “People of Color,” “females” and “All other [religions].”
16 JCCC’s programming separates the participants in its school-based programs by race and requires
17 the Caucasian group to sit in silence while the “People of Color” group recounts their past
18 encounters with alleged racism. The Caucasian group is also required by JCCC (and thus it’s
19 employer SBUSD as well) to affirm that they have received preferential treatment on the basis of
20 their race and is precluded from offering any explanation, as this in and of itself would be “racist”
21 and “collusion” against people of color. (Declaration of Kati Hedden, ¶8 (“Hedden Decl.”).)

22 Additionally, JCCC’s programming for SBUSD students further requires that the schools
23 only select students of Hispanic ethnicity to participate. (*Id.* ¶ 4; Declaration of Peter Scott
24 (“Scott Decl.¶ 2, Ex. A.”).) Tellingly, when a Caucasian junior high student with a Spanish last
25 name inadvertently was invited into the Hispanic-only program by JCCC, the student left in tears,
26

27
28 ¹ SBUSD and its Superintendent Cary Matsuoka, sued solely in his official capacity, are referred to collectively herein as “SBUSD”.

1 with suicidal ideation on account of being told that he or she was an “oppressor”. (Scott Decl. ¶2,
2 Ex. A.) Complaints from SBUSD parents about JCCC’s programming to the SBUSD School
3 Board have fallen on deaf ears and the Board yet again recently approved a new \$260,000 *no-bid*
4 contract with JCCC for the 2019-2020 school year (all while the SBUSD facilities are crumbling).

5 FESB has been forced to bring this lawsuit, seeking to have SBUSD submit the contract
6 with JCCC for “unconscious bias training” and all other services provided by JCCC, for public
7 bidding as required by law, and also for SBUSD to comply with its obligations to refrain from
8 discriminating against teachers and students on the basis of their race, sex and religion.

9 In response, JCCC has filed an anti-SLAPP motion, claiming that FESB’s 2nd, 3rd, 4th and
10 5th Causes of Action (*none of which are alleged against JCCC*) arise from JCCC’s protected
11 speech activity and are not likely to succeed on the merits. JCCC’s arguments are wrong in all
12 respects and its anti-SLAPP motion (in which defendants SBUSD and Matsuoka have joined)
13 (collectively “JCCC’s Motion) should be denied, for the following separate and independent
14 reasons (that will be addressed in detail hereinbelow):

15 First, this action is excepted from the anti-SLAPP statute under Code of Civil Procedure §
16 425.17(b), as it is brought solely in the public interest, and all other elements are met. On these
17 grounds alone, the Motion must be denied, as this action is excepted from the anti-SLAPP statute.

18 Second, even assuming *arguendo*, that the Court finds the foregoing do not apply, JCCC
19 cannot meet the first prong of the anti-SLAPP statute, as Plaintiff’s claims do not arise from
20 protected activity. Plaintiff’s claims arise from SBUSD’s adoption of JCCC’s programming. The
21 programming is discriminatory in its application and denies teachers and students full and equal
22 access to public education on the basis of their race, ethnicity, sex and/or religion; JCCC’s speech
23 is merely evidence of SBUSD’s illegal discrimination, and FESB’s lawsuit is against SBUSD for
24 discrimination, not against JCCC for its speech. As such, FESB’s causes of action challenged
25 here does not arise from any protected activity conducted by JCCC.

26 Third, FESB has a likelihood of success on the merits of its causes of action. Clear
27 evidence exists of the discriminatory nature of JCCC’s programming and SBUSD’s adoption
28 thereof, and as explained hereinbelow, none of the defenses raised by JCCC overcome its

1 discriminatory conduct. In sum, FESB respectfully requests that JCCC’s Motion (as to which
2 SBUSD has joined) be denied in its entirety.

3 **II. FACTUAL BACKGROUND**

4 **A. Plaintiff Fair Education Santa Barbara**

5 FESB is a 501(c)(3) formed to advocate and to ensure fair, non-discriminatory and
6 inclusive education policies in the SBUSD. In this regard, FESB has advocated for the cessation
7 of JCCC’s discriminatory programming and the hundreds of thousands of tax payer dollars
8 wasted on it each year. FESB has brought to the attention of the SBUSD School Board the many
9 substandard facilities and maintenance issues in its schools, filing 9 separate Williams Act
10 complaints. FESB was also instrumental in bringing to light a child sexual abuse scandal at
11 SBUSD’s MAD Academy (another unsupervised non-profit group operating out of school
12 facilities), that resulted in the departure of the Academy’s director and may result in additional
13 criminal prosecutions. (Declaration of Greg Gandrud (“Gandrud Decl.”) ¶ 8”).

14 **B. SBUSD’s Contracts With JCCC**

15 For several years, SBUSD has engaged JCCC to provide purported “unconscious bias”
16 training, consisting of several different programs, including the Institute for Equity in Education
17 (“IEE”) for teachers and Talking In Class for students. (Second Amended Complaint (“SAC”),
18 Ex. A.) Pursuant to a series of no-bid contracts, to date SBUSD has paid JCCC over \$1,000,000
19 for this programming. While the instant lawsuit was pending, SBUSD and JCCC entered into
20 another no-bid contract to engage JCCC for 2019-2020 school year at a cost to the taxpayers of
21 \$258,115. (SAC, Ex. A.) The 2019-2020 Contract requires JCCC to provide three sessions of the
22 IEE program to SBUSD teachers at a cost of \$154,800 and seven Talking In Class programs at a
23 cost of \$42,255, among several other programs provided by JCCC. (SAC, Ex. A.)

24 **C. JCCC’s Discriminatory Programming And Its Harmful Effects**

25 While SBUSD and JCCC purport to provide “diversity, inclusion and equity” programs,
26 JCCC’s actual curriculum is anything but. JCCC’s actual curriculum is a radical, discriminatory
27 and deeply harmful indoctrination program that is *creating* and *highlighting* division amongst
28 different groups. Both SBUSD and JCCC have refused to provide copies of JCCC’s teaching

1 materials despite repeated requests. However, the materials that have leaked to the public and are
2 attached to the SAC state for example the following:

- 3 • “Privileged Groups” include “Men,” “White People,” and “Christian People” and so-called
4 “Target Groups” include “Women,” “People of Color,” and “All Others [as to religion].”
5 (SAC, Ex. C, p. 15.)
- 6 • “Racism” is defined as “[a] system of oppression based on race that privileges white people
7 and targets people of color.” (*Id.*, p. 17.)
- 8 • “Religious Oppression” is defined as “Christian People” targeting “All Others.” (*Id.*, p. 15.)
- 9 • “One way of looking at the history of public education in the United States is to see how
10 wealthy people and business shaped the schools to contain and control poor people and turn
11 them into useful workers and consumers. That’s why rich people are willing to support
12 public schools with their tax dollars [sic] because they benefit.”(*Id.*, Ex. C, p. 137.)

13 In practice, JCCC’s programming is even more extreme. By way of example, in the IEE
14 program, JCCC splits the participants into separate racial groups – Caucasians in one group and
15 so-called “People of Color” in another group. (Hedden Decl. ¶ 8; SAC ¶ 35-36.) Once separated
16 by race, the Caucasian participants are required to listen to the “People of Color” group describe
17 their past experiences with racism, but are not permitted to respond in any fashion. The
18 Caucasian group is then forced to confirm or deny if they have ever received preferential
19 treatment on the basis of their race or if they have ever been accused of being racist. (Hedden
20 Decl. ¶ 8.) The Caucasian group is not permitted explain the circumstances behind of any these
21 issues, as JCCC instructs that any such response or explanation is in and of itself “racist” and
22 constitutes a form of “collusion” against “People of Color.” (*Id.*) At least one participant in the
23 IEE program stated that, when she questioned the bases of JCCC’s teaching, she was simply told
24 that she must “come to terms with [her] ‘whiteness’.” (*Id.* ¶ 9.)

25 In the Talking In Class program, JCCC expressly instructs SBUSD teachers to *only* select
26 students of Hispanic ethnicity to attend the program. (Hedden Decl. ¶ 4.) Although the Talking
27 In Class program occurs on school grounds during school hours, *teachers are not permitted to*
28 *attend, the instructional materials are not released, and the class is completely unsupervised by*

1 *the school.* (Hedden Decl. ¶¶ 4, 6). To date, and before any discovery has been taken in this
2 case, FESB has been able to obtain evidence showing that at least one Caucasian student, who
3 was inadvertently selected for the class because he has a Spanish name as his mother is from
4 Spain, suffered severe trauma from the indoctrination programming. This Caucasian student
5 (then in junior high) returned from the first day of JCCC’s Talking In Class program in tears,
6 expressing suicidal ideation and requiring therapy because among other things, JCCC had taught
7 that Caucasian people are oppressors of Latinos. (Scott Decl. ¶ 2, Ex. A.) Other children in the
8 program were deeply disturbed because they were required to shout out racial slurs. (Hedden
9 Decl. ¶ 5.) Additionally, when several Caucasian students were selected to participate in the latest
10 Talking In Class program, JCCC expressed disappointment to the principal, stating that JCCC had
11 to modify its curriculum based on the race of the students participating.² (Scott Decl. ¶ 2, Ex. A.)

12 JCCC’s and SBUSD’s discriminatory conduct also has resulted in a racially hostile
13 environment in SBUSD, including at least one student being physically assaulted due to his race
14 and political ideology, as well as other students being verbally harassed and bullied because they
15 are Caucasian. (Hammel Decl. ¶¶ 3, 5; Rosenberg Decl. ¶¶ 6, 11, 12.)

16 **III. LEGAL STANDARD**

17 California’s Anti-SLAPP statute “requires the court to engage in a two-step process” to
18 determine whether a defendant’s Section 425.16 Motion to Strike should be granted. *Equilon*
19 *Enterprises v. Consumer Cause, Inc.* (2002) 29 Cal.4th 53, 67. “First, the defendant must make a
20 prima facie showing that the plaintiff’s ‘cause of action ... aris[es] from’ an act by the defendant
21 ‘in furtherance of the [defendant’s] right of petition or free speech...in connection with a public
22 issue.’” *Simpson Strong-Tie Co., Inc. v. Gore* (2010) 49 Cal.4th 12, 21. “If the court finds such a
23 showing has been made, it then determines whether the plaintiff has demonstrated a probability of
24

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26 ² Notably, JCCC’s programming appears to be created, run and orchestrated by individuals
27 with absolutely no professional teaching training much less by credentialed teachers (as required
28 by the District’s LCAP funds used to pay JCCC). Making matters worse, the background of
Jarrod Schwartz, who runs JCCC, appears to be that of someone trained in mind manipulation
and brainwashing, holding an unspecified “degree” from the NTL Institute for Applied
Behavioral Science. (SAC, Ex. C, p. 205.)

1 prevailing on the claim.” *Equilon, supra*, 29 Cal.4th at 67.

2 “[T]he court’s responsibility is to accept as true the evidence favorable to the plaintiff,”
3 and “the defendant’s evidence is considered with a view toward whether it defeats the plaintiff’s
4 showing as a matter of law, such as by establishing a defense or the absence of a necessary
5 element.” *Daniels v. Robbins* (2010) 182 Cal.App.4th 204, 215. As explained in *Overstock.com,*
6 *Inc. v. Gradient Analytics, Inc.*, “the plaintiff’s burden of establishing a probability of prevailing is
7 not high: We do not weigh credibility, nor do we evaluate the weight of the evidence. Instead, we
8 accept as true all evidence favorable to the plaintiff and assess the defendant’s evidence only to
9 determine if it defeats the plaintiff’s submission as a matter of law. Only a cause of action that
10 lacks ‘even minimal merit’ constitutes a SLAPP.” 151 Cal. App. 4th 688, 699-700 (2007).
11 “[V]erified allegations based on the personal knowledge of the pleader may be considered in
12 deciding a section 425.16 motion.” *Salma v. Capon* (2008) 161 CA4th 1275, 1289.

13 **IV. ARGUMENT**

14 **A. The Code Of Civil Procedure § 425.17(b) Public Interest Exception Removes**
15 **This Action From The Ambit Of The Anti-SLAPP Law**

16 California Code of Civil Procedure § 425.17 provides for several exceptions to the §
17 425.16 Anti-SLAPP statute. These exceptions were enacted due to “a disturbing abuse of Section
18 425.16, the California Anti-SLAPP Law,” and a legislative finding “that it is in the public interest
19 to encourage continued participation in matters of public significance, and that this participation
20 should not be chilled through abuse of the judicial process or Section 425.16.” Cal. Code Civ.
21 Proc. § 425.17(a). Code of Civil Procedure § 425.17(b) carves out the exception as follows:

22 (b) Section 425.16 does not apply to any action brought solely in the public
23 interest or on behalf of the general public if all of the following conditions exist:

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

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

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

3 Cal. Code Civ. Proc. § 425.17(b). This exception applies to the instant action.

4 First, FESB's lawsuit is brought solely in the public interest and on behalf of Santa
5 Barbara's citizens. As stated in the SAC, FESB filed this action to enforce "the substantial public
6 interest in having SBUSD's, Matusoka's and JCCC's statutory duties and obligations enforced,
7 which have a direct impact on the fundamental right to education grounded in the California
8 Constitution." (SAC ¶ 18.) The SAC additionally states that this action "addresses public rights
9 and seeks to enforce the procurement of public duties relating to education." (SAC ¶ 19.) Even
10 JCCC concedes that this action involves matters of public importance. (Motion p. 9, ln 5 - 8.)

11 Second, FESB does not seek any relief greater than the relief sought for the general public
12 – namely, a writ, injunction and/or declaratory judgment directing SBUSD to comply with its
13 statutory duties to refrain from facilitating and suborning discrimination on the basis of race, sex
14 and/or religion. (SAC ¶ 9.) Other than costs and attorney's fees, this action seeks no monetary
15 relief and no relief inuring specifically or exclusively to FESB that is any different than the relief
16 sought for the general public. (SAC pp. 23-24.)

17 Third, if successful, this action would enforce an important right affecting the public
18 interest and would confer a significant benefit on the general public. If Plaintiff is successful in
19 this action, the general public would receive the benefit of having SBUSD refrain from
20 discriminating on the basis of race, sex and religion.

21 Fourth, private enforcement of this action is necessary and places a disproportionate
22 financial burden on Plaintiff in order to ensure that the Defendants do not persist in their unlawful
23 discriminatory conduct. Fair Education Santa Barbara repeatedly brought these issues to the
24 attention of the SBUSD School Board, but was ignored and rebuffed at every turn. Plaintiff had
25 no remaining option but to file this lawsuit. Additionally, FESB stands to gain no monetary relief
26 in this matter. On the other hand, Plaintiff is required to fund the litigation costs and attorneys'
27 fees in this action completely on its own. In sum, all elements for the exception are met.

28 FESB anticipates that JCCC will incorrectly argue that it falls within the "exception to the

1 exception” under Code of Civil Procedure § 425.17(d), which states that the subdivision (b)
2 exception does not apply to “[a]ny nonprofit organization that receives more than 50 percent of its
3 annual revenues from federal, state, or local government grants, awards, programs, or
4 reimbursements for services rendered.” Cal. Code Civ. Proc. § 425.17(d)(3). JCCC Executive
5 Director Jarrod Schwartz stated in his Declaration that JCCC is a non-profit organization and that
6 “[m]ore than 50 percent of its annual revenues come from federal, state, or local government
7 contracts for its services, including without limitation contracts with public school districts and
8 county government agencies.” (Schwartz Decl. ¶ 8.) This conclusory self-serving statement lacks
9 foundation and is not backed up by any accounting documents or tax return information.
10 ***Further, it does not satisfy the express statutory requirement that the revenues be derived from***
11 ***“reimbursements for services rendered.”*** JCCC only states that its revenues are derived from
12 “contracts with public school districts and county government agencies.” JCCC’s supporting
13 evidence does not offer, much less prove, that it is not generating a profit from its contracts (it
14 may well be), which would also remove JCCC from the ambit of this exception.

15 Consequently, JCCC has not satisfied its burden of demonstrating that it falls within this
16 exception to the exception. Thus, the Code of Civil Procedure 425.17(b) exception applies to this
17 action and it is not subject to an Anti-SLAPP Motion.

18 **B. FESB’s SAC Is Not Subject To An Anti-SLAPP Motion Because It Does Not**
19 **Arise From Protected Activity**

20 JCCC argues that the Second through Fifth Causes of Action pertaining to SBUSD’s
21 unlawful discrimination are subject to the Anti-SLAPP statute because they target JCCC’s
22 purportedly “protected” speech. In addition to the fact that these causes of action are not even
23 alleged against JCCC, JCCC cannot show that these claims arise from protected activity.

24 Anti-SLAPP motions may only target claims “arising from any act of [the defendant] in
25 furtherance of the [defendant’s] right of petition or free speech under the United States
26 Constitution or the California Constitution in connection with a public issue.” Cal. Code Civ.
27 Proc. § 425.16(b). For a claim to “arise” from protected activity “the defendant’s act underlying
28 the plaintiff’s cause of action must *itself* have been an act in furtherance of the right of petition or

1 free speech.” *City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 78 (“*City of Cotati*”). “[A] claim
2 may be struck only if the speech or petitioning activity *itself* is the wrong complained of, and not
3 just evidence of liability or a step leading to some different act for which liability is asserted.”
4 *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1060, 1065.

5 “[T]he mere fact that an action was filed after protected activity took place does not mean
6 the action arose from that activity for the purposes of the anti-SLAPP statute.” *Navellier v.*
7 *Sletten* (2002) 29 Cal.4th 82, 89; *see City of Cotati*, 29 Cal.4th at 78. The “fact that protected
8 activity may lurk in the background—and may explain why the rift between the parties arose in
9 the first place—does not transform [the parties'] dispute into a SLAPP suit.” *Episcopal Church*
10 *Cases* (2009) 45 Cal.4th 467, 478.

11 “Courts presented with suits alleging discriminatory actions have taken [...] care not to
12 treat such claims as arising from protected activity simply because the discriminatory animus
13 might have been evidenced by one or more communications by a defendant.” *Park, supra.*, 2
14 Cal.5th at 1065. In *Nam v. Regents of University of California* (2016) 1 Cal.App.5th 1176,
15 plaintiff sued for sexual harassment and discrimination, among other things. Defendant university
16 responded with an anti-SLAPP motion that contended that the suit arose from communicated
17 complaints about the plaintiff’s performance and written warnings. The Court of Appeal
18 disagreed, finding liability based instead on the university’s alleged retaliatory conduct,
19 “...subjecting [plaintiff] to increased and disparate scrutiny, soliciting complaints about her from
20 others, removing [her] from the workplace, refusing to give her credit towards the completion of
21 her residency, [...] and ultimately terminating her...” *Id.* at 1192. *Nam* “illustrates that while
22 discrimination may be carried out by means of speech, such as a written notice of termination, and
23 an illicit animus may be evidenced by speech, neither circumstance transforms a discrimination
24 suit to one arising from speech. What gives rise to liability is not that the defendant spoke, but
25 that the defendant denied the plaintiff a benefit, or subjected the plaintiff to a burden, on account
26 of a discriminatory or retaliatory consideration.” *Park, supra.*, 2 Cal.5th at 1066.

27 Here, the second, third, fourth and fifth causes of action at issue in this motion are not
28 even alleged against JCCC – they are only alleged against SBUSD and Matsuoka. These causes

1 of action for violation of Government Code § 11135, Education Code §§ 201 and 220 and
2 Education Code § 60044, respectively, concern SBUSD’s actions in retaining JCCC to teach in its
3 schools. Specifically, the crux of Plaintiff’s claims is that SBUSD’s adoption and implementation
4 of JCCC’s programming is discriminatory in practice and denies students and teachers equal
5 access to educational opportunities based on protected classifications.³ The evidence shows:

- 6 • JCCC’s IEE program splits the participants into different racial groups and requires the
7 Caucasian participants to sit silently and without response and listen to the “People of
8 Color” group recount instances of racism. (Hedden Decl. ¶ 8; SAC ¶ 35.)
- 9 • JCCC’s IEE program requires only the Caucasian participants to confirm receiving
10 preferential treatment due to their race or were accused of racism. (Hedden Decl. ¶ 8.)
- 11 • JCCC’s IEE program does not permit Caucasian participants to respond to the comments
12 from the “People of Color” group or to provide any explanation of the circumstances in
13 which they were accused of being racist. (Hedden Decl. ¶ 8.)
- 14 • JCCC’s Talking In Class program instructs SBUSD teachers to only select Hispanic
15 students to participate. (Scott Decl. ¶ 2, Ex. A.)
- 16 • JCCC changes its Talking In Class curriculum based on the race and ethnicity of the
17 participants. (Scott Decl. ¶ 2, Ex. A.)
- 18 • When a Caucasian student inadvertently participated in Talking In Class, he left in tears
19 with suicidal ideation because JCCC’s instructors caused him to believe he was an
20 “oppressor” due to his racial identity. (Scott Decl. ¶2, Ex. A.)

21 SBUSD’s *adoption* of JCCC’s programming has resulted in (or at a minimum contributed
22 to) an environment where Caucasian students are physically assaulted and verbally bullied by
23 other students on the basis of their race or political viewpoints. (Hammel Decl. ¶¶ 3, 5, 7; Scott
24 Decl. ¶ 2, Ex. A.) The language and written curriculum from JCCC’s programming is direct
25 evidence of the discriminatory intent behind SBUSD’s *adoption* of the JCCC programming.
26 Thus, the basis of Plaintiff’s claims is *SBUSD’s adoption* of JCCC’s discriminatory curriculum.
27 As the SBUSD’s discriminatory conduct (the basis from which the suit arises) is not protected
28 activity, JCCC cannot establish the first prong required under the anti-SLAPP statute, and its
motion fails.

27 ³ This lawsuit is not over JCCC’s right to speak. JCCC is free to spread its message with
28 appropriate time, place and manner restrictions. However, what it and SBUSD cannot do is deny
teachers and students equal educational opportunities based on their race, ethnicity, religion or
sex.

1 **C. Plaintiff Has A Probability Of Prevailing On Its Claims**

2 In the event the Court finds that the § 425.17(b) exception does not apply and that JCCC
3 has met its initial burden of showing that the 2nd through 5th Causes of Action arise out of
4 protected activity, FESB has a probability of prevailing on its claims.

5 **1. Second Cause Of Action For Violation Of Government Code § 11135**

6 Government Code § 11135(a) provides in pertinent part:

7 No person in the State of California shall, on the basis of sex, race, color,
8 religion, ancestry, national origin, ethnic group identification, age, mental
9 disability, physical disability, medical condition, genetic information, marital
10 status, or sexual orientation, be unlawfully denied full and equal access to the
11 benefits of, or be unlawfully subjected to discrimination under any program or
activity that is conducted, operated, or administered by the state or by any state
agency, is funded directly by the state, or receives any financial assistance from
the state. [...]

12 Gov. Code § 11135(a). JCCC does not dispute that this statute is applicable to SBUSD. Instead,
13 JCCC argues that this cause of action fails for four reasons, none of which are availing.⁴

14 First, JCCC argues that Plaintiff’s claims are not supported by any evidence other than
15 “sweeping, unsupported statements in its Petition” and that Plaintiff cannot show that “any
16 student was ever subjected to intentional discrimination, a hostile environment, or that anyone
17 was ever denied equal access to education.” (Motion p. 11.) JCCC’s argument of counsel is
18 demonstrably false and rather remarkable given that discovery has not even commenced.

19 FESB presents allegations and evidence in its Verified SAC (including the JCCC
20 documents attached as Exhibits thereto) and herewith that SBUSD’s adoption and subornment of
21 JCCC’s programming in the school unlawfully discriminates on the basis of race, ethnicity,
22 religion and sex and denies full and equal access to education on these bases. As set forth in the
23 SAC, SBUSD contracted with JCCC to provide several different programs to SBUSD teachers
24 and students, including IEE for teachers and Talking in Class for students. (SAC ¶ 20.)

26 ⁴ JCCC’s Motion also purports to incorporate by reference all of the arguments and
27 authorities contained in its concurrently filed Demurrer to Plaintiff’s SAC. This is improper and
28 unfair and, if permitted, would allow JCCC to circumvent the page limitations in the Code of
Civil Procedure. JCCC’s Motion should be limited exclusively to the arguments and authority
contained within its briefing.

1 JCCC's IEE program teaches that "Whites," "Christians," and "Males" are "oppressors"
2 and "target" "People of Color," all other religions and women, respectively. (SAC ¶ 34.) JCCC's
3 materials define "racism" as "[a] system of oppression based on race that privileges white people
4 and targets people of color." (SAC, Ex. C, p. 17.) JCCC's materials further define "Religious
5 Oppression" as "Christian People" targeting "All Others" and "Sexism" as "Men" targeting
6 "Women." (SAC, Ex. C, p. 15.) Additionally, JCCC separates IEEE participants into different
7 racial groups, who receive different treatment during the program. (SAC ¶ 35; Hedden Decl. ¶ 8.)
8 Once separated, JCCC requires Caucasian participants to listen to the "people of color" group
9 describe their past experiences of racism, but are not permitted to respond. The Caucasian group
10 is then forced to confirm or deny if they have ever received preferential treatment on the basis of
11 their race or if they have ever previously been accused of being racist. (Hedden Decl. ¶ 8.) The
12 Caucasian group is not permitted to respond to the comments from the "people of color" group or
13 explain the circumstances behind any of these issues, as according to JCCC, responding would in
14 and of itself be "racist" and constitute a form of "collusion" against "people of color." (Hedden
15 Decl. ¶ 8.) If dissent is raised to JCCC's programming by a Caucasian person, JCCC's response
16 is that the individual must "come to terms with [her] 'whiteness'." (Hedden Decl. ¶ 9.)

17 For its Talking In Class program, JCCC asks SBUSD teachers to select students to
18 participate in the program. JCCC expressly asks teachers to *only* select students of Hispanic
19 ethnicity to attend. (Hedden Decl. ¶ 4.) At least one Caucasian student was inadvertently
20 selected for the class due to his Spanish name, as his mother is from Spain. This Caucasian
21 student returned from the first day of the program in tears, expressing suicidal ideation and
22 requiring therapy because JCCC had taught that Caucasian people are oppressors of Latinos.
23 (Scott Decl. ¶ 2, Ex. A.) Other children returning from the program were deeply upset because
24 they were required to shout out racial slurs. (Hedden Decl. ¶ 5.) Additionally, when several non-
25 Hispanic students were selected for the latest Talking In Class program, JCCC expressed
26 disappointment to the school principal, stating that it had to modify its curriculum based on the
27 race of the students participating. (Scott Decl. ¶ 2, Ex. A.)

28 Second, JCCC argues that FESB failed to exhaust administrative remedies prior to filing

1 its Government Code § 11135 claim. JCCC cites to no authority for this exhaustion of
2 administrative remedies argument and offers no argument as to exactly what “administrative
3 remedies” Plaintiff should have pursued prior to filing this action. If the law does not expressly
4 provide for a proceeding of some nature before an administrative body with respect to the claims
5 asserted, the defense of failure to exhaust administrative remedies is inapplicable. *Henry George*
6 *Sch. Of Soc. Sci of San Diego v. San Diego Unified Sch. Dist.* (1960) 183 Cal.App.2d 82, 86-87
7 (“[N]o authority has been cited, and we have found none, that applies the doctrine of exhaustion
8 of administrative remedy to any case where no specific remedy is provided, permitted or
9 authorized by statute or by rule of the administrative agency involved.”). Additionally, Plaintiff
10 has satisfied any administrative procedures, Plaintiff’s members made numerous petitions to the
11 SBUSD School Board and Superintendent Matsuoka at school board meetings notifying them of
12 the discriminatory nature and content of the JCCC programming and with no action taken.

13 Third, JCCC argues that it and SBUSD are “exempt” from the anti-discrimination
14 prohibitions in Government Code § 11135 under Government Code § 11139, which states that the
15 article “shall not be interpreted in a manner that would frustrate its purpose” or “in a manner that
16 would undermine lawful programs which benefit members of the protected bases described in
17 Section 11135.” Cal. Gov. Code § 11139. There is nothing in this statute that “exempts” JCCC
18 from the anti-discrimination statutes and Plaintiff is not urging any interpretation of the statute
19 that would frustrate its purposes. Plaintiff is merely asking that SBUSD not intentionally
20 discriminate against, belittle and denigrate its teachers and students who are Caucasian, Christian
21 or Male – which is exactly what Government Code § 11135 mandates.⁵

22 **2. Third Cause Of Action For Violation Of Education Code § 220**

23 California Education Code § 220 provides that:

24 No person shall be subjected to discrimination on the basis of . . . gender, . . . race
25 or ethnicity, religion, sexual orientation, or any other characteristic that is

26 ⁵ Further, to the extent JCCC is arguing that Government Code § 11139 permits so-called
27 “minority” groups to lawfully discriminate against Caucasians, Plaintiff pauses to note only that
28 Caucasian students are a minority group in SBUSD – comprising only 33% of the enrolled
student body (as compared to Hispanic/Latino students who comprise approximately 60% of the
enrolled student body). (Scott Decl.¶ 3, Ex. B.)

1 contained in the definition of hate crimes . . . in any program or activity conducted
2 by an educational institution that . . . benefits from[] state financial assistance[.]

3 Cal. Ed. Code § 220. JCCC argues that Plaintiff cannot meet the standard of “severe, pervasive
4 and offensive harassment” that deprived anyone of ‘the right of equal access to educational
5 benefits and opportunities.” (Motion p. 12-13.) JCCC is wrong.

6 As discussed above, Plaintiff alleged and presented evidence of extreme, severe and
7 pervasive harassment and discrimination that deprives individuals of equal access to educational
8 benefits, including teachers being separated into different racial groups and denigrated based on
9 their race and ethnicity, students being excluded from JCCC programs solely on the basis of their
10 race, and students being driven to suicidal ideation in JCCC’s Talking In Class program. (Hedden
11 Decl. ¶ 8; Scott Decl. ¶ 2. Ex. A.)

12 JCCC also argues that Plaintiff has not shown any actual harm from SBUSD and JCCC’s
13 discrimination. This is simply wrong. Unlawful discrimination is per se injurious. *Koire v.*
14 *Metro Car Wash* (1985) 40 Cal.3d 24, 33 (“arbitrary sex discrimination by businesses is per se
15 injurious.”). “[W]here a defendant has violated a civil rights statute, [the court] will presume that
16 the plaintiff has suffered irreparable injury from the fact of the defendant’s violation.” *Silver*
17 *Sage Partners, Ltd. v. City of Desert Hot Springs* (9th Cir. 2001) 251 F3d 814, 827. Further,
18 Plaintiff’s SAC alleges that it has suffered injury as a result of SBUSD’s discriminatory actions
19 and that it has a direct interest in seeing that SBUSD is enjoined from engaging in practices
20 violative of California’s anti-discrimination statutes. (SAC ¶¶ 17-19.)

21 The evidence submitted with this Opposition shows teachers and students are absolutely
22 suffering injuries from SBUSD’s actions – at least one Caucasian student suffered suicidal
23 ideation from JCCC’s “Anti-White” teachings, one student has been bullied due to his race, and at
24 least one Caucasian teacher was harassed and denigrated by JCCC on the basis of her race. (Scott
25 Decl. ¶ 2, Ex. A; Hammel Decl. ¶¶ 2, 3, 5; Hedden Decl. ¶ 9.)⁶

26
27 ⁶ JCCC argues that Plaintiff’s Third Cause of Action is a “complete inversion” of the
28 Legislature’s purpose in enacting Education Code § 220, which is to ensure that public schools
“undertake education activities to counter discriminatory incidents [...and...] to minimize and
eliminate a hostile environment on school grounds...” Cal. Ed. Code § 201. It is clear that it is

1 **3. Fourth Cause Of Action For Violation Of Education Code § 60044**

2 Education Code § 60044 prohibits a governing school board from adopting any
3 instructional materials for use in the schools that contain any matter reflecting adversely upon
4 persons on the basis of race or ethnicity, gender, religion or other characteristic listed in California
5 Education Code § 220. JCCC argues that Plaintiff cannot show a violation of this statute because,
6 under Education Code § 60040, the SBUSD School Board is given carte blanche and absolute
7 authority to determine what materials are or are not violative of Education Code § 60044.
8 According to JCCC, Plaintiff “cannot restrict the Board’s ability to make these decisions” –
9 regardless of whether or not the material is violative of § 60044’s anti-discrimination provisions.
10 This argument is absurd and completely usurps the Court’s ultimate authority to determine
11 whether educational materials adopted by SBUSD violate Education Code § 60044.⁷

12 **V. CONCLUSION**

13 Plaintiff Fair Education Santa Barbara respectfully requests that the Court deny JCCC’s
14 Motion in its entirety and award Plaintiff its attorney’s fees incurred in opposing the motion.

15
16 Dated: September 4, 2019

EARLY SULLIVAN WRIGHT
GIZER & McRAE LLP

17 By: /s/ Peter Scott

18 Eric P. Early
19 Peter Scott
20 Attorneys for Plaintiff
FAIR EDUCATION SANTA BARBARA, INC.

21
22
23 actually JCCC’s overtly discriminatory programming that runs counter to the legislative purpose
24 behind Education Code § 220.

25 ⁷ JCCC cites to *Monteiro v. Tempe Union High Sch. Dist.* (9th Cir. 1998) 158 F.3d 1022,
26 for the purported “black letter law” that a school district has supreme authority to determine what
27 is and is not taught in its adopted curriculum. *Monteiro* held that a school board’s adoption of
28 *The Adventures of Huckleberry Finn* into its curriculum did not violate equal protection because
the work had historical and academic value outweighing any racially insensitive terms contained
in the book. However, the Court of Appeal expressly limited the extent of its holding by stating:
“Nor do we preclude the prosecution of actions alleging that schools have pursued policies that
serve to promote racist attitudes among their students, or have sought to indoctrinate their young
charges with racist concepts.” *Id.* at 1032. That is exactly what FESB seeks to target here.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

On September 4, 2019, I served the foregoing document(s) described as: **PLAINTIFF FAIR EDUCATION SANTA BARBARA, INC.’S OPPOSITION TO DEFENDANTS’ SPECIAL MOTION TO STRIKE** on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

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- 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.
- BY PERSONAL DELIVERY: I caused such envelope to be delivered by hand to the offices of the above named addressee(s).
- BY ELECTRONIC SERVICE: Via electronic transmission, by use of the One Legal electronic filing platform.
- BY E-MAIL: I caused to be e-mailed a true copy to the e-mail addresses listed above.

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

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

/s/ Robie Ann Atienza-Jones

ROBIE ANN ATIENZA-JONES