

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Central Justice Center
700 W. Civic Center Drive
Santa Ana, CA 92702

SHORT TITLE: Orange County Board of Education vs. Mijares

**CLERK'S CERTIFICATE OF MAILING/ELECTRONIC
SERVICE**

CASE NUMBER:
30-2018-01023385-CU-MC-CJC

I certify that I am not a party to this cause. I certify that the following document(s), Minute Order dated 12/17/19, have been transmitted electronically by Orange County Superior Court at Santa Ana, CA. The transmission originated from Orange County Superior Court email address on December 17, 2019, at 2:27:20 PM PST. The electronically transmitted document(s) is in accordance with rule 2.251 of the California Rules of Court, addressed as shown above. The list of electronically served recipients are listed below:

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CLERK'S CERTIFICATE OF MAILING/ELECTRONIC SERVICE

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

MINUTE ORDER

DATE: 12/17/2019

TIME: 02:15:00 PM

DEPT: C33

JUDICIAL OFFICER PRESIDING: James Crandall

CLERK: P. Rief

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: None

CASE NO: **30-2018-01023385-CU-MC-CJC** CASE INIT.DATE: 10/04/2018

CASE TITLE: **Orange County Board of Education vs. Mijares**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Misc Complaints - Other

EVENT ID/DOCUMENT ID: 73188938

EVENT TYPE: Under Submission Ruling

APPEARANCES

MOTION BY DEFENDANT/CROSS-COMPLAINANT AL MIJARES, PH.D., ORANGE COUNTY SUPERINTENDENT OF SCHOOLS FOR AN ORDER: (1) CONFIRMING STAY OF PRELIMINARY INJUNCTION, AND (2) ISSUING DISCRETIONARY STAY OF ACTION PENDING APPEAL

There are no appearances by any party.

The court, having taken the above-entitled matter under submission on 12/12/2019 and having fully considered the arguments of all parties, both written and oral, rules as follows:

1. Request for order confirming automatic stay

The issue of mandatory/prohibitory is one for the Court of Appeal, which decides whether the order automatically creates a stay or not. This court does not have jurisdiction to "confirm" the automatic stay and no authority has been cited. Where there is a dispute about whether an automatic stay applies, the appropriate remedy is a writ of supersedeas from the appellate court. *Dowling v. Zimmerman* (2001) 85 Cal.App.4th 1400, 1405.

The request for an order confirming an automatic stay is **Denied**.

2. Request for order issuing a discretionary stay

Mijares says the question of who can act as counsel will be an issue in the appeal of the preliminary injunction and that the Court of Appeal's opinion will have a significant effect on the disposition of the underlying case. His arguments in this regard are speculative.

What will be before the Court of Appeal on the appeal of the preliminary injunction is whether this court abused its discretion in determining that the Board has a likelihood of success on the merits and that the balance of harms favors it.

The issue of whether the court abused its discretion will be based largely on the proper interpretation and

application of the law, since the facts are mostly undisputed, but this is an interim ruling that is not on the merits as a matter of law. The granting or denial of a preliminary injunction "does not amount to an adjudication of the ultimate rights in controversy. It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits" should make the order requested. *Jamison v. Department of Transportation* (2016) 4 Cal.App.5th 356, 361.

If this court's ruling is reversed, all that will happen is that the matter will go to trial for a final adjudication of the application of the law on the merits.

Mijares' argument that the Court of Appeal will determine the application of the law in ruling on the injunction so the issues will be narrowed at trial, is overly optimistic, if for no other reason than the difference in the standards of review.

The trial on the merits scheduled one month from now will determine the obligation to pay. Although it is anticipated the judgment will be appealed, the ruling on the preliminary injunction will no longer exist because it will have been merged into the judgment. For these reasons, there is no reason to delay the trial. If, as Mijares says, this is an issue of state-wide interest, it is time to get it resolved.

Having carefully considered the arguments offered in favor of a stay, particularly on the issue of the effect of a disposition of the pending appeal, this court does not find them persuasive. Suppositions about what effect a Court of Appeal ruling will have on this case are not sufficient to delay proceeding with hearings on the pending Motions for Summary Judgment or a delay in the trial of this action.

Accepting the argument that the issue is one of statewide concern, the court concludes that a decision on the merits, even if appealed, will serve the interests of justice better than a stay of further proceedings to await a decision that is limited to a provisional order. Accordingly, the motion is denied.

The parties' Motions for Summary Judgment/Adjudication will be heard on Thursday, December 19, 2019.

Orange County Board of Education's Motion to Quash Subpoenas will be heard on Thursday, December 19, 2019.

The trial date of January 21, 2020 remains.

Both parties' objections to the declarations submitted in support of their arguments on this Motion are SUSTAINED.

The Request for Judicial Notice is DENIED because the matter for which judicial notice is sought is not relevant to the court's determination of the issues here.

The Motion to Strike a Declaration in support of the Reply is MOOT in light of the ruling above.

The clerk is ordered to give notice by electronic service.

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

JUL 25 2019

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

Attorneys for Plaintiff / Cross-Defendant
ORANGE COUNTY BOARD OF EDUCATION

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

11 ORANGE COUNTY BOARD OF
12 EDUCATION,

Plaintiff,

v.

15 AL MIJARES, in his official capacity as
16 Superintendent of Schools, and Does 1
17 through 10, inclusive,

Defendants.

18 AL MIJARES, Ph.D., Orange County
19 Superintendent of Schools,

Cross-Complainant,

v.

22 ORANGE COUNTY BOARD OF
23 EDUCATION, and Roes 1 through 10,
24 inclusive,

Cross-Defendant.

Case No.: 30-2018-01023385-CU-MC-CJC

Complaint Filed October 04, 2018

JAMES L. GRANDALL
Judge Melissa R. McCormick, Dept C-13

**[PROPOSED] ORDER GRANTING
PLAINTIFF AND CROSS-DEFENDANT
ORANGE COUNTY BOARD OF
EDUCATION'S MOTION FOR
PRELIMINARY INJUNCTION**

DATE: MAY 30, 2019

TIME: 1:30 P.M.

DEPT.: C-13

RESERVATION NUMBER: 73026946

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ORDER

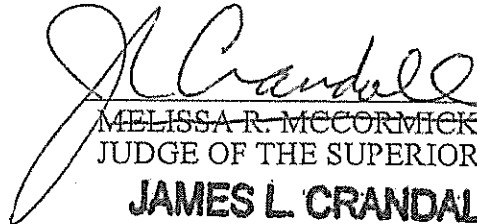
Having considered the parties' briefing and oral argument regarding Plaintiff/Cross-Defendant Orange County Board Of Education's (the "Board") Motion for a Preliminary Injunction, and due deliberation having been had, and it appearing to the satisfaction of the Court that a preliminary injunction should issue:

IT IS ORDERED THAT:

Defendant Al Mijares, its agents, servants, assigns and those acting in concert with it and any entity acting on its behalf, are hereby enjoined and restrained, during the pendency of this action and pending a further order of the Court, from refusing to remit payment which has been approved by the Executive Committee of the Board to Gregory Rolan and Haight Brown & Bonesteel, LLP for legal services performed for the Board.

IT IS SO ORDERED.

DATED: 7-25-2019


~~MELISSA R. MCCORMICK~~
JUDGE OF THE SUPERIOR COURT
JAMES L. CRANDALL

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ORANGE COUNTY BOARD OF
EDUCATION,

Plaintiff/Petitioner,

v.

AL MIJARES, in his official capacity as
Superintendent of Schools; TONY
THURMOND, in his official capacity as
Superintendent of Public Instruction; and
DOES 1 through 10, inclusive,

Defendants/Respondent
s.

Case No.:

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

Plaintiff/Petitioner Orange County Board of Education (the "Board" or "Petitioner") petitions this Court for writs of mandate directed to Defendant/Respondent Al Mijares, in his official capacity as Orange County Superintendent of Schools ("Mijares" or "The Superintendent") and Defendant/Respondent Tony Thurmond, in his official capacity as California Superintendent of Public Instruction ("Thurmond" or "the SPI") (collectively, "Respondents") and alleges against Respondents as follows:

INTRODUCTION

1. By this action, the Board seeks to remedy Superintendent Mijares' failure and refusal to execute his duties to the Board, to the Orange County Department of Education

1 (“OCDE” or the “Department”), and to the citizens of Orange County regarding the submission
2 of the Department’s annual budget for 2019-2020. The Board also seeks to remedy
3 Superintendent Thurmond’s failure to execute his duties to review the Board’s annual budget
4 under the process and criteria set forth in California Education Code § 1622. The actions and
5 refusals to act of Superintendent Mijares and Superintendent Thurmond contravene the
6 requirements of California law.

7 2. Pursuant to its legal authority granted by the Orange County Board of Supervisors
8 in 1977 and applicable California state law, the Board adopted an annual budget for the
9 Department for the 2019-2020 fiscal year on June 26, 2019, and then re-adopted the budget on
10 August 1, 2019. That budget cut approximately \$170,000 from Mijares’ proposed level of
11 spending for lobbying, travel, and conferences, which the Board felt were unnecessary
12 expenditures and not sufficiently beneficial uses of taxpayer funds. Pursuant to his position as
13 Secretary to the Board and Superintendent of Schools for Orange County, Mijares was required
14 to sign and submit the Board-adopted budget to the State of California. Despite repeated requests
15 and even a formal Board resolution directing Mijares to sign and submit the budget, he has failed
16 and refused to do so.

17 3. Under the California Education Code, the Board is required to adopt, on or before
18 July 1 of each fiscal year, an annual budget for the OCDE. (Cal. Ed. Code § 1622(a).) The Board
19 is then required to file that budget with the state Superintendent of Public Instruction (Respondent
20 Thurmond), the County Board of Supervisors, and the County auditor. (*Id.*) The Board is also
21 granted final budgetary authority pursuant to Education Code section 1042(b), which states that
22 county boards of education may review and revise the county superintendent’s annual itemized
23 estimate of anticipated revenue, and specifies that an annual itemized estimate may not be filed
24 by the county superintendent until the board of education has approved it. (Cal. Ed. Code §
25 1042(b).) Under the California Education Code, the Superintendent is required to submit the
26 budget to the SPI, Thurmond, in the format prescribed by the SPI. (Cal. Ed. Code § 14050; 5 Cal.
27 Code Reg. § 17340.) The current format prescribed by the SPI allows for either the Board
28 Secretary or the Board clerk to sign and certify the Board-adopted budget.

1 4. Pursuant to Education Code requirements, the Board held a budget study session
2 and a public hearing on the Superintendent's proposed 2019-2020 budget. At that hearing, and
3 at the budget study session, the Board engaged in a discussion with OCDE staff regarding the
4 same proposed budget, including Board member concerns regarding the Superintendent's use of
5 lobbyists and the amount of spending on lobbying, travel, and conferences. The Board then
6 adopted a 2019-2020 budget with approximately \$170,000 in cost reductions in those areas, and
7 requested that Mijares sign and submit the budget.

8 5. However, in contravention of his duties of office (and his position as Secretary to
9 the Board), Mijares failed and refused to sign the Board-approved and Board-authorized budget
10 or file it with the SPI. Mijares' stated reasons for refusing to do so is his disagreement with the
11 Board-approved budget reductions to lobbying, travel, and conference expenses, and his
12 expressed concern that cooperating in any Board-initiated changes to the budget will lead the
13 Board to make other changes to his proposed budgets in the future. Instead, Mijares unlawfully
14 submitted *his own* budget to the CDE (which put the \$170,000 in unnecessary spending on staff
15 travel junkets, conferences, and lobbying back in), which has not been approved or adopted by
16 the Board. As a result of Mijares' failure to perform his duties, the Board took it upon itself to
17 file the Board-approved and Board-adopted budget with the SPI with the signature of the Board's
18 nominated clerk, Lisa Sparks.

19 6. Thurmond purported to reject the Board's adopted and submitted budget on the
20 basis that the budget was not signed by Mijares as Board Secretary or submitted by Mijares as
21 county superintendent. No provision of California law authorizes the SPI to impose such
22 conditions on the submission of a county budget (which would in effect grant the county
23 superintendent approval authority over the Board's budget authority), or to reject a board of
24 education's budget because such conditions are not met. To the contrary, Education Code section
25 1622 gives the SPI the authority to examine a county budget and to approve or disapprove it *based*
26 *on specified criteria*. Under that section, the SPI is required to approve or disapprove the budget
27 by September 15, and in the event of a disapproval, the SPI is required to inform the county office
28 of education the SPI's recommendations for revision of the budget. The SPI's purported rejection

1 of the Board's budget was not for any of the reasons authorized by section 1622. Accordingly,
2 pursuant to Education Code section 1622, the budget should have been accepted and approved by
3 the SPI.

4 7. Presently, Thurmond refuses to accept the Board's adopted budget without
5 Mijares' signature on the verification page and submission of the budget to him. Thus, Mijares'
6 action, which he is duty-bound to perform, is being required by CDE and SPI for the Department's
7 budget, which has been adopted by the Board, to be submitted and accepted.

8 8. Given Mijares' refusal to submit the Board-adopted budget as required by his
9 duties of office and the law, the Board hereby requests that the Court issue a writ of mandamus
10 requiring Mijares to comply with his official and legal obligations and sign and submit to the SPI
11 the budget which the Board has adopted. The Board also requests a writ of mandamus requiring
12 Thurmond to examine and approve or disapprove the Board's budget based upon, and in
13 conformity with, the considerations and requirements set forth in Education Code section 1622.

14 9. Mijares' refusal to sign and submit the Board's adopted budget, and Thurmond's
15 refusal to follow Education Code section 1622 in reviewing and approving the budget, has caused
16 and will continue to cause the Board and the public significant harm. According to the CDE, the
17 state and OCDE will now be forced to engage in a lengthy budget process mandated by the CDE,
18 depriving the Board of its statutory right to exercise local control over the budget. And, should
19 the OCDE will be forced to operate under the 2018-2019 budget, the OCDE would be constrained
20 to expend significantly less in the areas of books and supplies and certificated employees than it
21 would under the Board's 2019-2020 budget, expenditures which are necessary in the view of both
22 the Superintendent and the Board to serve the educational needs of the County. Finally, Mijares
23 is also ultimately putting the Department's funding at risk by failing to sign and submit the annual
24 budget approved and adopted by the Department's Board.

25 **JURISDICTION AND VENUE**

26 10. Venue is proper in this Court pursuant to Code of Civil Procedure section 395(a),
27 because all of Petitioner's claims arose as a result of the acts or omissions of Respondents, some
28 of who work, reside, or conducts business in the County of Orange. In addition, venue is proper

1 because Petitioner's claims arose as a result of the acts or omissions which occurred, or partially
2 occurred, in Orange County

3 **THE PARTIES**

4 11. Petitioner Orange County Board of Education is, and at all times mentioned herein
5 was, a public entity duly existing under and by virtue of the laws of the State of California and
6 operating as a County Board of Education providing educational services in the County of
7 Orange.

8 12. Respondent Al Mijares, in his official capacity as Orange County Superintendent
9 of Schools is, and at all times mentioned here was, an individual working as Superintendent of
10 Schools in the County of Orange.

11 13. Respondent Tony Thurmond, in his official capacity as California State
12 Superintendent of Public Instruction is, and at all times mentioned here was, an individual
13 working as California State Superintendent of Public Instruction.

14 14. Defendants DOES 1 through 10 are sued under fictitious names, as their true
15 names and capacities are unknown to Plaintiff. Plaintiff will amend this complaint when their true
16 names and capacities are ascertained.

17 **GENERAL ALLEGATIONS**

18 **A. The Orange County Board of Supervisors Delegates Budgetary Authority to the**
19 **Board of Education**

20 15. In 1977, the Orange County Board of Supervisors lawfully delegated to the Board
21 the duties and functions allowed under Education Code section 1080, including fiscal oversight
22 of the county superintendent pursuant to Education Code section 1042. Accordingly, the Board
23 is now considered fiscally independent.

24 **B. The Board's Adoption of the 2019-2020 Orange County Department of**
25 **Education Budget**

26 16. The California Education Code requires county boards of education to adopt, on
27 or before July 1 of each fiscal year, an annual budget for their respective county departments of
28 education. (Cal. Ed. Code § 1622(a).) The Board is also granted final budgetary authority

1 pursuant to Education Code section 1042(b), which states that county boards of education may
2 review and revise the county superintendent's annual itemized estimate of anticipated revenue,
3 and specifies that an annual itemized estimate may not be filed by the county superintendent until
4 the board of education has approved it.

5 17. At the Board's regular meeting on May 8, 2019, it held a budget study session for
6 the 2019-2020 fiscal year, as required by the Education Code. On June 12, 2019, the Board held
7 a public hearing on the Superintendent-proposed 2019-2020 budget, as required by California
8 Education Code section 1620. At that meeting and at budget study session, the Board engaged in
9 a discussion with OCDE staff regarding that same budget. Specifically, members of the Board
10 questioned the level of spending on lobbying, conferences, and travel, as well as the purposes of
11 the money spent on lobbying activities. Members of the Board also inquired whether there could
12 be any cuts made to travel, consulting, and lobbying expenses. Mijares' staff responded that no
13 such cuts could be made, but would not provide the Board with any adequate reasons or
14 justifications.

15 18. At the Board's June 26, 2019 meeting, the Board approved and adopted the
16 proposed 2019-2020 budget, with approximately \$170,000 in well-placed and reasonable cost
17 reductions for travel, conference, and lobbying expenditures. The Board determined that such
18 reductions were appropriate to reduce unnecessary, wasteful spending. Mijares did not
19 communicate with the Board or the Board's Executive Committee, consisting of the Board's
20 President and Vice President, regarding the budget between June 26, 2019 and the Board's next
21 meeting on July 10, 2019.

22 19. Only a few days before its July 17, 2019 meeting, the Board received notice that
23 the OCDE took the position that the Board did not have the authority to amend the budget without
24 another public meeting. Board members learned that Mijares, in contravention of his duties of
25 office and his position as Secretary to the Board, did not sign the Board-adopted budget, or file
26 the budget with the SPI. Mijares informed the Board for the first time at that meeting that because
27 the budget he proposed was amended at the June 26 meeting, the Board must post a new notice
28 regarding the adopted budget and have a new public hearing. Although it did not feel it was

1 necessary, the Board decided that it would hold a subsequent meeting to allay any potential CDE
2 concerns and to again approve its budget.

3 20. On July 17, 2019, Board Trustee Mari Barke also requested that the OCDE send
4 an electronic version of the budget that the Board approved. However, on July 19, 2019, Mijares
5 informed the Board that he would not agree to amend the budget. Instead, Mijares informed the
6 Board that he would not agree to amend the budget, and would not provide a modified budget
7 reflecting the Board's changes.

8 21. On August 1, 2019, at a special meeting, the Board held a lawful public hearing
9 and re-adopted the budget it had previously adopted at its June 26 meeting. The state-approved
10 budget form provides for the Board Secretary or the Board clerk to sign and certify the Board-
11 adopted budget. At the August 1 meeting, the Board appointed Trustee Lisa Sparks as the Board
12 clerk, pursuant to Education Code § 1040(a). In the interest of joint governance, special interim
13 Board counsel Gregory Rolen requested that Mijares sign the Board's adopted budget. Mijares
14 ignored and failed to respond to counsel's request, and so Trustee Sparks signed the budget in her
15 capacity as Board clerk.

16 **C. Mijares' Refusal To Submit The Budget**

17 22. Under California law, the Superintendent must submit to the SPI the Board-
18 approved budget. (Cal. Ed. Code § 14050; 5 Cal. Code Reg. § 17340.) The law does not allow
19 the Superintendent to exercise discretion in whether or not to submit a Board-adopted budget.
20 The same is true for the Superintendent's responsibility to sign the budget. Rather, it merely
21 imposes a ministerial administrative duty on the Superintendent to sign and submit the budget.

22 23. Mijares has not followed the law. He has not submitted the Board-adopted budget
23 to the SPI. Rather, instead of submitting the Board's adopted budget, he submitted his own
24 budget, which was never adopted by the Board as required by law. Given Mijares' refusal to sign
25 and submit the adopted budget, the Board had no choice but to submit its lawfully adopted budget
26 itself. The Board therefore took it upon itself to file its budget with the SPI with the signature of
27 the Board's nominated clerk, Lisa Sparks.

28 **D. The Superintendent Of Public Instruction's Improper Rejection Of The Board's**

1 **Adopted Budget**

2 24. After Trustee Sparks signed the Board's adopted budget, the Board submitted the
3 budget to the Superintendent Thurmond, and it did so on the state-approved form and in the state-
4 approved format. On information and belief, Thurmond failed to examine and review the budget
5 as he was required to do pursuant to Education Code § 1622. Instead, on August 30, 2019,
6 Thurmond purported to reject the Board's adopted and submitted budget on the basis that it was
7 not signed by Mijares, who is the Secretary of the Board, and that it was not physically submitted
8 by Mijares as county superintendent. This ignored the fact that the SPI's own state-approved
9 budget form provided for signature either by the Board's secretary or clerk. It also ignored the
10 fact that California law does not authorize the SPI to condition the discharge of his duties under
11 Education Code § 1622 to examine and approve county department budgets in this way.
12 Thurmond's failure to carry out his duties under Education Code § 1622 with respect to the
13 Board's budget, and his purported rejection of that budget because it was not signed and submitted
14 by Mijares, are unlawful.

15 25. Since the Thurmond's refusal to receive and examine the Board's budget, special
16 counsel for the Board Gregory Rolen has attempted to engage the CDE in conversation regarding
17 budget requirements, the SPI's duty to examine the Board-adopted budget, and possible solutions
18 going forward. In addition, the Board has attempted to compromise with Mijares and come to a
19 mutually agreeable budget. The Board's good faith attempts have not succeeded.

20 26. On November 11, 2019, Thurmond, through the CDE, initiated a committee
21 selection process for the state to intervene in the county budget development, as detailed under
22 Education Code section 1623.

23 27. Mijares' refusal to sign and submit the Board's adopted budget to the CDE and
24 SPI has and will caused the Board and the public significant harm. Should Mijares not so submit
25 the budget, the state and county will be forced to engage in a lengthy budget process mandated
26 by the CDE. In addition, should Thurmond continue to impose unlawful conditions on the
27 submission of the Board's budget and refuse to discharge his duties under Education Code § 1622,
28 the Board will be deprived of its statutory rights to exercise local control over the budget.

1 Morevoer, the CDE has informed the Board that, should the Board not secure a budget that is
2 signed and submitted by Mijares, the OCDE will be operate under its prior the 2018-2019 budget
3 until a new budget is approved by the SPI. The 2018-2019 budget, among other things, allows
4 for significantly less spending in the areas of books and supplies and certificated employees.
5 Accordingly, should the OCDE be forced to operate under that budget pending the CDE's lengthy
6 budgetary process, the public will be significantly harmed. Finally, Mijares' failure to sign and
7 submit the budget adopted by the Board also ultimately puts the OCDE's funding at risk.

8 **FIRST CAUSE OF ACTION**

9 **(Writ of Mandate – Code Civ. Proc. § 1085; Violation of Education Code section 14050**

10 **Against Respondent Al Mijares)**

11 28. Petitioner incorporates by reference paragraphs 1 through 16 as if fully set forth
12 herein.

13 29. Mijares has an affirmative legal duty to comply with the requirements of the
14 Education Code in submitting an annual budget for the OCDE. Mijares' legal obligation to file
15 the Board's budget is ministerial in duty – Mijares has no discretion to determine whether or not
16 the budget should be filed.

17 30. Education Code section 14050 mandates that a county superintendent of schools
18 submit a budget to the state Superintendent of Public Instruction for the succeeding fiscal year in
19 the form that the Superintendent of Public Instruction shall prescribe. The Education Code
20 provides no mechanism for the county superintendent to exercise discretion in deciding whether
21 or not to so submit the budget. The current budget form used by the SPI requires the signature of
22 either the county superintendent or the clerk of the board of education. The SPI has taken the
23 position, which the Board refutes, that the county superintendent must sign the budget. The
24 legislature through the Education Code explicitly gives the authority to adopt the budget to the
25 Board, not the Superintendent – a state agency may not subjugate that power.

26 31. Mijares has a clear, present, and ministerial duty to sign and submit the budget that
27 the Board adopted on June 26, 2019 and August 1, 2019.

28 32. Notwithstanding this legal duty, Mijares has refused to submit to the SPI a Board-

1 approved budget for the 2019-2020 fiscal year, on forms prescribed by the SPI, including his
2 signature. This conduct amounts to a failure to perform a ministerial duty.

3 33. Mijares is mandated to sign and submit a Board-adopted budget. The Board and
4 the public have a beneficial interest in the performance of that duty. Because Mijares did not sign
5 and submit the Board-adopted budget, the OCDE, including the Board, is now operating without
6 an approved budget, and the CDE has indicated that it will intervene. This will amount to a loss
7 of resources to the Board and to the public.

8 34. The Board has no plain, speedy, and/or adequate remedy in the ordinary course of
9 law.

10 **SECOND CAUSE OF ACTION**

11 **(Writ of Mandate – Code Civ. Proc. § 1085; Violation of Education Code section 1622**

12 **Against Respondent Tony Thurmond)**

13 35. Petitioner incorporates by reference paragraphs 1 through 34 as if fully set forth
14 herein.

15 36. Thurmond has an affirmative legal duty to comply with the requirements of the
16 Education Code in examining and approving the annual budget for the OCDE. Thurmond's legal
17 obligations are ministerial in duty – Thurmond must evaluate and approve or disapprove the
18 Board's budget based upon prescribed standards in the Education Code.

19 37. Education Code section 1622 mandates that: "The Superintendent shall examine
20 the budget to determine if it (A) complies with the standards and criteria adopted by the state
21 board pursuant to Section 33127 for application to final local educational agency budgets, (B)
22 allows the county office of education to meet its financial obligations during the fiscal year, and
23 (C) is consistent with a financial plan that will enable the county office of education to satisfy its
24 multiyear financial commitments. In addition, the Superintendent shall identify any technical
25 corrections to the budget that must be made. On or before September 15, the Superintendent
26 shall approve or disapprove the budget and, in the event of a disapproval, transmit to the county
27 office of education in writing his or her recommendations regarding revision of the budget and
28 the reasons for those recommendations." (Ed. Code § 1622, subd. (b)(1).) It also specifies that:

1 “For the 2014-15 fiscal year and each fiscal year thereafter, the Superintendent shall disapprove
2 a budget if any of the following occur: (A) The Superintendent has not approved a local control
3 and accountability plan or an annual update to the local control and accountability plan filed by a
4 county board of education pursuant to Section 52070.5 that is effective for the budget year. (B)
5 The Superintendent determines that the budget does not include the expenditures necessary to
6 implement the local control and accountability plan or an annual update to the local control and
7 accountability plan that is effective for that budget year.” (Ed. Code § 1622, subd. (b)(2).)

8 38. Thurmond has a clear, present, and mandatory duty to examine and approve or
9 disapprove the Board’s budget based upon the parameters specified by section 1622. Thurmond
10 is not authorized to review county board of education budgets under criteria that are not set forth
11 in section 1622, to transfer county board authority to adopt and submit annual budgets to the
12 county superintendent or another other person or agency, or to impose administrative or other
13 conditions on county boards for the submission of the annual budget that would dilute or transfer
14 the board’s sole and final authority under law to adopt and submit the annual budget.

15 39. Notwithstanding this legal duty, Thurmond has refused to examine and approve or
16 disapprove the Board’s budget pursuant to Education Code § 1622. Instead, Thurmond has
17 purported to reject the Board’s budget based upon a supposed lack of Mijares’ signature and
18 physical submission. This conduct amounts to a failure to perform a ministerial duty.

19 40. Thurmond is required to examine the Board’s budget. The Board and the public
20 have a beneficial interest in the SPI’s performance of that duty. Because Thurmond has not done
21 so, the OCDE, including the Board, is now operating without a state-approved budget, even
22 though the Board has adopted a budget for the 2019-2020 fiscal year, and even though Thurmond
23 has not cited to *any* of the reasons specified in Education Code § 1622 for the budget not having
24 been approved by him. Thurmond’s unlawful failure to discharge his duties under Education
25 Code § 1622 has caused, and will continue to cause, a loss of resources to the Department and to
26 the public, and it threatens unlawfully to restructure the budgetary authority and responsibilities
27 of the Board, by transferring that authority in part to the Superintendent, and improperly creating
28 a governing structure in which the Board and Superintendent must jointly co-approve the

1 Department's annual budget Such a structure is unlawful, as authority for adoption and approval
2 of the budget under California law is exclusively the Board's.

3 41. The Board has no plain, speedy, and/or adequate remedy in the ordinary course of
4 law.

5 **THIRD CAUSE OF ACTION**

6 **(Injunctive Relief –Code of Civil Procedure Sections 526, 527 and Civil Code Section 3422**

7 **Against Respondent Al Mijares)**

8 42. Petitioner incorporates by reference paragraphs 1 through 41 as if fully set forth
9 herein.

10 43. Mijares has refused to sign and submit the Board-adopted budget for the OCDE
11 for the 2019-2020 fiscal year, in violation of his duties under the Education Code. The Board is
12 informed and believes that Mijares intends to and will continue to refuse to sign and submit the
13 Board's lawfully adopted budget.

14 44. A preliminary and permanent injunction to enjoin Mijares from interfering with
15 the Board's submission of its lawfully adopted budget to the SPI and CDE is necessary to
16 prevent the continued interference with and violation of the rights and responsibilities of the
17 Board and the public.

18 45. The Board has no adequate remedy at law to remedy this violation, and any
19 pecuniary compensation would be inadequate. The Board is therefore entitled to injunctive
20 relief pursuant to Code of Civil Procedure sections 526 and 527 and Civil Code section 3422.

21 46. Unless the Court enjoins Mijares's conduct, the Board will be irreparably injured
22 and damaged, in that it and the OCDE will be deprived of a lawful budget for the 2019-2020 fiscal
23 year.

24 **FOURTH CAUSE OF ACTION**

25 **(Injunctive Relief –Code of Civil Procedure Sections 526, 527 and Civil Code Section 3422**

26 **Against Respondent Tony Thurmond)**

27 47. Petitioner incorporates by reference paragraphs 1 through 46 as if fully set forth
28 herein.

1 48. Thurmond has refused to examine and approve or disapprove the Board-adopted
 2 budget for the OCDE for the 2019-2020 fiscal year, in violation of his duties under the
 3 Education Code. The Board is informed and believes that Thurmond intends to and will
 4 continue to refuse to do so.

5 49. A preliminary and permanent injunction to enjoin Thurmond from interfering
 6 with the Board’s approval of its lawfully adopted budget is necessary to prevent the continued
 7 interference with and violation of the rights and responsibilities of the Board and the public.

8 50. The Board has no adequate remedy at law to remedy this violation, and any
 9 pecuniary compensation would be inadequate. The Board is therefore entitled to injunctive
 10 relief pursuant to Code of Civil Procedure sections 526 and 527 and Civil Code section 3422.

11 51. Unless the Court enjoins Thurmond’s conduct, the Board will be irreparably
 12 injured and damaged, in that it and the OCDE will be deprived of a lawful budget for the 2019-
 13 2020 fiscal year.

FIFTH CAUSE OF ACTION

(Declaratory Relief –Code of Civil Procedure Section 1060 Against Al Mijares)

16 52. Petitioner re-alleges and incorporates by reference as though fully set forth herein
 17 the allegations of paragraphs 1 through 51 above.

18 53. An actual controversy has arisen and now exists between and among the Board
 19 and Mijares, in that the Board contends that it has lawfully adopted a budget and that Mijares
 20 must sign and submit that budget, and Mijares disputes his obligation to do so.

21 54. The Board therefore seeks judicial determination of the rights and duties of the
 22 parties under the Education Code, particularly section 14050, and a declaration that California
 23 law requires that Mijares must sign and submit to the SPI the budget which the Board has adopted.

SIXTH CAUSE OF ACTION

**(Declaratory Relief –Code of Civil Procedure Section 1060 Against Tony
 Thurmond)**

28 55. Petitioner re-alleges and incorporates by reference as though fully set forth herein
 the allegations of paragraphs 1 through 54 above.

1 56. An actual controversy has arisen and now exists between and among the Board
2 and Thurmond, in that the Board contends that it has lawfully adopted a budget and that
3 Thurmond must examine and approve or disapprove the budget, and Thurmond disputes his
4 obligation to do so.

5 57. The Board therefore seeks judicial determination of the rights and duties of the
6 parties under the Education Code, particularly section 1622, and a declaration that California law
7 requires that Thurmond must examine and approve or disapprove the budget which the Board has
8 adopted.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Petitioner prays as follows:

11 1. On the First Cause of Action, for a Writ of Mandate directing Respondent Mijares
12 to Sign and Submit the budget which the Board adopted on June 26, 2019 and August 1, 2019 or
13 in the alternative to show cause before this Court at a specified time and place why this relief
14 should not be granted.

15 2. On the Second Cause of Action, for a Writ of Mandate directing Respondent
16 Thurmond to examine and approve or disapprove based on the factors listed in Education Code
17 section 1622 the budget which the Board adopted on June 26, 2019 and August 1, 2019 or in the
18 alternative to show cause before this Court at a specified time and place why this relief should
19 not be granted.

20 3. On the Third Cause of Action, for preliminary and permanent injunctive relief to
21 preclude Respondent Mijares from interfering with the submission of the Board's adopted budget
22 to the California Superintendent of Public Instruction.

23 4. On the Fourth Cause of Action, for preliminary and permanent injunctive relief to
24 preclude Respondent Thurmond from interfering with the examination and approval or
25 disapproval of the Board's adopted budget based on the factors listed in Education Code section
26 1622.

27 5. On the Fifth Cause of Action, for a declaratory judgment declaring that
28

1 Respondent Mijares must sign and submit to the California Superintendent of Public Instruction
2 the budget which the Board has adopted.

3 6. On the Sixth Cause of Action, for a declaratory judgment declaring that
4 Respondent Thurmond must examine and approve or disapprove based on the factors listed in
5 Education Code section 1622 the budget which the Board has adopted.

6 7. For a Temporary Restraining Order and preliminary and permanent injunctive
7 relief requiring Respondent Mijares to sign and submit the Board's adopted budget to the
8 California Superintendent of Public Instruction.

9 8. For a Temporary Restraining Order and preliminary and permanent injunctive
10 relief requiring Respondent Thurmond to examine and approve or disapprove based on the
11 factors listed in Education Code section 1622 the budget which the Board has adopted.

12 5. For reasonable attorneys' fees and costs of suit herein.

13 5. For such other relief as the court may deem just and proper.

14
15 DATED: November 15, 2019

16 By: EPSTEIN BECKER & GREEN, P.C.

17
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19 Kristin M. Halsing
20 Attorneys for Plaintiff/Petitioner
21 ORANGE COUNTY BOARD OF
22 EDUCATION
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ELECTRONICALLY FILED
Superior Court of California,
County of Orange

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By Mary M Johnson, Deputy Clerk

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ORANGE COUNTY BOARD OF
EDUCATION,

Plaintiff,

v.

AL MIJARES, in his official capacity as
Superintendent of Schools, and DOES 1
through 10, inclusive,

Defendants.

Case No.: 30-2018-01023385-CU-MC-CJC

Judge Melissa R. McCormick

**COMPLAINT FOR DECLARATORY
RELIEF (CODE CIV. PROC. § 1060) AND
INJUNCTIVE RELIEF (CODE CIV.
PROC. §§ 526 AND 527)**

Plaintiff Orange County Board of Education (the "Board" or "Plaintiff") alleges against Defendant Al Mijares, in his official capacity as Orange County Superintendent of Schools ("Mijares," "The Superintendent," or "Defendant"), as follows:

INTRODUCTION

1. By this action, the Board seeks to remedy Superintendent Mijares' overt violation of California law and unfortunate disregard of fundamental notions of shared governance between the Board and Superintendent, as reflected and required by the State of California Education Code. The Board also seeks through this action to affirm and uphold the fundamental right of a client to select and approve its own legal counsel, a right which Mijares has attempted to deny to the Board.

1 2. The Board and Mijares are required under California law to appoint the same legal
2 counsel. (Cal. Ed. Code § 35041.5.) However, in contravention of that requirement and of his
3 own previous representations to the Board, Mijares purported to appoint and hire a new General
4 Counsel for both himself and the Board. Mijares did so without the Board’s approval, and without
5 properly vetting and taking into consideration a significant potential conflict of interest issue that
6 Mijares’ selected individual had with respect to the Board.

7 3. After this unlawful unilateral action, Mijares has repeatedly attempted to force the
8 Board to use the General Counsel that he appointed, including by interfering with the Board’s
9 efforts to contract with outside counsel in order to obtain trustworthy legal advice free from
10 confidentiality and conflict of interest concerns. These efforts have included threatening outside
11 lawyers with reprisals such as nonpayment of bills if they commence work for the Board, refusing
12 to provide counsel with necessary records and information pertaining to matters coming before
13 the Board and requiring Board action, and making baseless assertions of the confidentiality of
14 information and “gifts of public funds” to justify such conduct.

15 4. Despite the Board’s request that Mijares remedy his violation of California law
16 and engage in a mutual process of selecting and appointing a General Counsel as provided by
17 Section 35041.5 of the California Education Code, Mijares has refused to do so and has instead
18 insisted that he alone has the power to appoint the General Counsel that will advise the Board and
19 Superintendent, which has made this legal action necessary. Given these blatantly unlawful acts,
20 the Board requests that the Court enjoin Mijares’ actions and declare the Board and Mijares’
21 respective rights under Education Code sections 35041.5 and 1042.

22 **JURISDICTION AND VENUE**

23 5. Venue is proper in this Court pursuant to Code of Civil Procedure section 395(a),
24 because all of Plaintiff’s claims arose as a result of the acts or omissions of Defendant, who works,
25 resides, or conducts business in the County of Orange.

26 **THE PARTIES**

27 6. Plaintiff Orange County Board of Education is, and at all times mentioned herein
28 was, a public entity duly existing under and by virtue of the laws of the State of California and

1 operating as a County Board of Education providing educational services in the County of
2 Orange.

3 7. Defendant Al Mijares, in his official capacity as Orange County Superintendent of
4 Schools is, and at all times mentioned here was, an individual working as Superintendent of
5 Schools in the County of Orange.

6 **GENERAL ALLEGATIONS**

7 **A. Mijares' Unlawful Unilateral Appointment of a General Counsel in Violation of**
8 **Education Code § 35041.5**

9 8. The California Education Code authorizes county boards of education and county
10 superintendents to appoint a legal counsel. (Cal. Ed. Code § 35041.5.) A board of education and
11 superintendent from the same county must appoint the same legal counsel. *Id.*

12 9. In 2017 or early 2018, the current General Counsel for the Board and the
13 Superintendent, Ronald Wenkart, advised Mijares and the Board that he would be retiring and
14 leaving the General Counsel position in or around July of 2018. This necessitated some planning
15 and a process for a search for a new General Counsel.

16 10. At a meeting of the Board on April 11, 2018, Mijares and the Board discussed the
17 process for finding a new General Counsel. Ken Williams, then a Trustee (and now the President)
18 of the Board, made his concerns clear that more than just the Board's Executive Committee should
19 be involved, and that the Board itself should have a "say-so in the selection of Legal Counsel."
20 Mijares expressed his hope and represented that the process of selection would involve unanimity
21 between the Superintendent and the Board. Later, on May 30, 2018, the Associate Superintendent
22 confirmed to Mr. Williams her understanding that the "full Board" would discuss the selection of
23 the General Counsel.

24 11. Despite these assurances, on June 5, 2018, the Superintendent, through the Orange
25 County Department of Education, offered Jeffrey Riel the position of General Counsel. Mijares
26 did so without the Board's discussion, consideration, or approval of Mr. Riel. At the time, Mr.
27 Riel was in-house counsel to the Anaheim Union High School District ("AUHSD"). On June 15,
28 2018, again without Board action approving the appointment of Mr. Riel, the Superintendent's

1 office sent a notice announcing the purported selection of Jeffrey Riel as General Counsel.

2 12. In addition to this action taken without Board approval, it also appeared that
3 Mijares made the appointment without proper vetting and consideration of potential conflict of
4 interest issues for Mr. Riel. At the time of his hire by Mijares, Mr. Riel was in-house counsel to
5 the AUHSD, which was then (and still currently is) engaged in litigation against the Board and
6 the Orange County Department of Education. The Board therefore had (and still has) serious
7 concerns regarding actual and potential conflicts of interest relating to the AHUSD litigation.

8 13. On information and belief, a number of candidates who were well-qualified and
9 did not present such conflict of interest issues applied and were considered by Mijares for the
10 open General Counsel position.

11 14. On September 19, 2018, counsel for the Board sent a letter to counsel for Mijares,
12 detailing the Board's position and requesting that Mijares remedy his violation of California law
13 in regard to the appointment of the General Counsel. As of the filing of this action, Mijares has
14 failed to take action on the Board's request.

15 **B. Mijares' Unlawful Interference with the Board's Retention of Legal Counsel**

16 15. In an effort to receive trusted legal advice free from potential conflicts of interest,
17 Mr. Williams undertook in July and August of 2018 to identify outside counsel to provide special
18 legal services to the Board. The Board is expressly authorized by Education Code § 1042(d) to
19 retain outside legal counsel and other service providers. Mr. Williams contacted a trusted and
20 capable education attorney who had previously worked with the Board and the Orange County
21 Department of Education, and the Board planned to consider, discuss, and vote on the retention
22 of that counsel at its August 7, 2018 meeting.

23 16. Unfortunately, in the lead up to the August 7, 2018 meeting, both Board members
24 and the outside lawyer were contacted by Mijares, who informed them, among other things, that
25 he would not pay any of the Board's counsel's bills for her services to the Board. On information
26 and belief, Mijares, directly or indirectly through staff at the Office of the Superintendent,
27 threatened or suggested other reprisals if the lawyer (who along with her firm is located and
28 practices in Orange County) commenced any legal work for the Board. Shortly before the Board's

1 August 7, 2018 meeting, the outside lawyer advised Dr. Williams that she and her firm were
2 withdrawing from being considered for retention by the Board.

3 17. In August and September of 2018, Mr. Williams contacted another outside and
4 experienced education lawyer (this time a lawyer who was not located and practicing in Orange
5 County) to provide legal services to the Board. Mijares again contacted the Board and this outside
6 lawyer (and the managing partner of the outside lawyer's law firm) and again threatened to
7 withhold payment for services rendered by the lawyer to the Board. The Board voted to retain
8 this lawyer at its September 12, 2018 meeting, and the lawyer has provided valuable legal counsel
9 to the Board.

10 18. Since the September 12, 2018 meeting, Mijares has continued to attempt to
11 obstruct the Board's right to work with its retained outside legal counsel. Mijares has asserted
12 that he will not allow the Department of Education to pay any counsel's bills. In addition, on or
13 around September 27, 2018, Mijares informed the Board that he had directed his staff to refrain
14 from supplying counsel with information and records pertaining to matters pending before the
15 Board.

16 **FIRST CAUSE OF ACTION**

17 **(Injunctive Relief –Code of Civil Procedure Sections 526 and 527)**

18 19. Plaintiff incorporates by reference paragraphs 1 through 18 as if fully set forth
19 herein.

20 20. Mijares has unilaterally purported to appoint Mr. Riel as General Counsel for the
21 Board and Mijares, in violation of Education Code section 35041.5. Mijares continues to employ
22 Mr. Riel despite continued notice of this violation of the law and refuses to retain a General
23 Counsel mutually appointed by both the Superintendent and the Board. The Board is informed
24 and believes that Mijares intends to and will continue this unlawful practice unless this Court
25 enjoins him from doing so.

26 21. A preliminary and permanent injunction to enjoin Mijares from continuing to
27 purportedly employ Mr. Riel on behalf of himself and the Board is necessary to prevent the
28 continued interference with and violation of the Board's rights under California law, including

1 but not limited to the Education Code.

2 22. The Board has no adequate remedy at law to remedy this violation, and any
3 pecuniary compensation would be inadequate. The Board is therefore entitled to injunctive relief
4 pursuant to Code of Civil Procedure sections 526 and 527.

5 23. Unless the Court enjoins Mijares' conduct, the Board will be irreparably injured
6 and damaged, in that it will either need to continuously contract with outside counsel or work
7 with an in-house counsel with conflicts of interest and which it did not select and appoint, and it
8 will continue to suffer from a derogation of its authority and right under the California Education
9 Code to appoint its General Counsel mutually with the Superintendent.

10 **SECOND CAUSE OF ACTION**

11 **(Injunctive Relief –Code of Civil Procedure Sections 526 and 527)**

12 24. Plaintiff incorporates by reference paragraphs 1 through 23 as if fully set forth
13 herein.

14 25. Despite the Board's lawful contracting with outside counsel in accordance with
15 the Education Code section 1042(d), Mijares has violated California law by interfering with the
16 Board's receipt of legal advice and counsel from its outside attorney by, for example, refusing
17 to pay counsel's legal fees and refusing to provide counsel with necessary records and
18 information. The Board is informed and believes that Mijares intends to and will continue this
19 unlawful practice unless this court enjoins him from doing so.

20 26. A preliminary and permanent injunction to enjoin Mijares from interfering with
21 the Board's lawful contract with its retained counsel and his law firm is necessary to prevent the
22 continued interference with and violation of the Board's rights under California law, including
23 but not limited to California Education Code section 1042(d).

24 27. The Board has no adequate remedy at law to remedy this violation, and any
25 pecuniary compensation would be inadequate. The Board is therefore entitled to injunctive
26 relief pursuant to Code of Civil Procedure sections 526 and 527.

27 28. Unless the Court enjoins Mijares' conduct, the Board will be irreparably injured
28 and damaged, in that it will be deprived of the right to receive adequate and accurate legal

1 advice from its counsel of choice, and it will continue to suffer a derogation of its authority and
2 right to retain legal counsel under California law.

3 **THIRD CAUSE OF ACTION**

4 **(Declaratory Relief –Code of Civil Procedure Section 1060)**

5 29. Plaintiff re-alleges and incorporates by reference as though fully set forth herein
6 the allegations of paragraphs 1 through 28 above.

7 30. An actual controversy has arisen and now exists between and among the Board
8 and Mijares, in that the Board contends that it has the right and authority under California
9 Education Code section 35041.5 to appoint its General Counsel, and Mijares contends that he has
10 the sole and exclusive right to do so. Mijares also contends that the Board must work with and
11 obtain legal counsel from his selected and appointed General Counsel, and the Board disputes
12 this position.

13 31. The Board therefore seeks judicial determination of the rights and duties of the
14 parties under Education Code section 35041.5, and a declaration that, under that statute, Mijares'
15 purported appointment of Mr. Riel is invalid and void, and that California law requires that the
16 General Counsel must be appointed jointly by the Board and the Superintendent.

17 **FOURTH CAUSE OF ACTION**

18 **(Declaratory Relief –Code of Civil Procedure Section 1060)**

19 32. Plaintiff re-alleges and incorporates by reference as though fully set forth herein
20 the allegations of paragraphs 1 through 31 above.

21 33. An actual controversy has arisen and now exists between and among the Board
22 and Mijares, in that the Board contends that Mijares has violated and is continuing to violate
23 Education Code section 1042(d) by interfering with the Board's contract and relationship with
24 its lawfully retained outside counsel by, among other things, threatening not to pay, and
25 refusing to pay, counsel's fees for services rendered and refusing to provide counsel with
26 information and records necessary for him to give accurate and thorough legal advice and
27 counsel to the Board regarding matters requiring Board action. In so doing, Mijares is
28 preventing the Board from contracting with counsel for legal services, and from "pay[ing] from

1 any available funds the compensation that it deems proper for the services rendered,” as
2 explicitly allowed by California Education Code section 1042. Mijares is also interfering with
3 the Board’s ability to discharge its responsibilities and serve the public.

4 34. The Board therefore seeks judicial determination of the rights and duties of the
5 parties under Education Code section 1042, and a declaration that, under California law, the
6 Superintendent is required process payment of the Board’s counsel’s fees for services retained
7 by and rendered to the Board and must refrain from obstructing the Board’s right to effectively
8 contract with and be advised by counsel.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays as follows:

11 1. On the First Cause of Action, for a preliminary and permanent injunction to
12 preclude Defendant from continuing to violate California law by purporting to appoint the
13 General Counsel to the Board and the Superintendent unilaterally, and to preclude Defendant
14 from taking further action in violation of law in this regard.

15 2. On the Second Cause of Action, for a preliminary and permanent injunction to
16 mandate that Defendant process payments to the Board’s counsel for services rendered, provide
17 necessary information and records to the Board’s counsel, and refrain from interfering with the
18 Board’s retention and receipt of legal advice from its counsel.

19 3. On the Third Cause of Action, for a declaration that Defendant’s purported
20 appointment of Mr. Riel is invalid and void, and that California law requires that the General
21 Counsel must be appointed jointly by the Board and the Superintendent.

22 5. On the Fourth Cause of Action, for a declaration that, under California law,
23 Defendant is required to process payment of Plaintiff’s counsel’s fees for services retained by
24 and rendered to Plaintiff and must refrain from obstructing Plaintiff’s right to effectively contract
25 with and be advised by counsel.

26 6. For reasonable attorneys’ fees and costs of suit herein.

27 7. For such other relief as the court may deem just and proper.
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DATED: October 4, 2018

By: EPSTEIN BECKER & GREEN, P.C.



Jonathan Brenner
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Attorneys for Plaintiff
ORANGE COUNTY BOARD OF
EDUCATION