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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF ORANGE**

11 ORANGE COUNTY BOARD OF
12 EDUCATION,

13 Plaintiff,

14 v.

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

18 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)**

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

22 **INTRODUCTION**

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

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.



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