No. S226645

IN THE SUPREME COURT

OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, *et al.*,

Petitioners,

v.

THE SUPERIOR COURT OF LOS ANGELES COUNTY,

Respondent;

ACLU OF SOUTHERN CALIFORNIA, *et al.*,

Real Parties in Interest.

Review After Order Denying CPRA Request
Second Appellate District, Division Three
Case No.: B257230
On Appeal from the Los Angeles Superior Court
The Honorable Luis A. Lavin
Sup. Ct. Case No.: BS145753

MOTION FOR JUDICIAL NOTICE OF REAL PARTIES IN INTEREST ACLU OF SOUTHERN CALIFORNIA AND ERIC PREVEN; DECLARATION OF COLIN D. WELLS WITH EXHIBITS A-G

Peter J. Eliasberg (SBN 189110)
ACLU FOUNDATION OF
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1313 West 8th Street
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Tel.: (213) 977-9500
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Jennifer Brockett (SBN 193433)
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Attorneys for Real Parties in Interest
ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

No. S226645

IN THE SUPREME COURT

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COUNTY OF LOS ANGELES BOARD OF SUPERVISORS, *et al.*,

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Attorneys for Real Parties in Interest
ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

Petitioners ACLU of Southern California and Eric Preven (collectively, "ACLU") respectfully move this court, pursuant to California Rule of Court 8.252 and Evidence Code §§ 452, 453, and 459, to take judicial notice of the following:

1. Order Awarding Attorneys' Fees in favor of Plaintiff Danielle Baez against Defendants Burbank Unified School District and Craig Jellison, entered on July 11, 2014 in the matter *Baez v. Burbank Unified Sch. Dist.,* Los Angeles Superior Court Case No. BC372092 ("Attorneys' Fees Order"). *See* Declaration of Colin D. Wells ("Wells Decl.") ¶ 2; Ex. A.
2. A September 25, 2012 news article by Rex Dalton entitled "OC Families Face Fierce Fight for Special Ed Services," published in the *Voice of OC*. Wells Decl. ¶ 3; Ex. B.
3. A September 27, 2012 news article by Rex Dalton entitled "A 'Brotherhood' Fights Families Wanting Special Ed," published in the *Voice of OC*. Wells Decl. ¶ 4; Ex. C.
4. An October 4, 2012 news article by Rex Dalton entitled "Questions Surround Attorneys' Actions in Special Ed Case," published in the *Voice of OC*. Wells Decl. ¶ 5; Ex. D.
5. An October 2015 article by Matthew Heller entitled "Think Twice Before Suing This School District" published in *California Lawyer*. Wells Decl. ¶ 6; Ex. E.

6. A January 23, 2014 article by Allison Wisk entitled "Lawyer fees add up in records cases[:] Some agencies pay thousands to handle information requests" published in *Dallas News*. Wells Decl. ¶ 6; Ex. F.
7. An August 22, 2013 article by Katy Steinmetz entitled "Mediation Complete for San Diego Mayor Bob Filner, Details Still Confidential" published in *Time*. Wells Decl. ¶ 7; Ex. G.

MEMORANDUM OF POINTS AND AUTHORITIES

Evidence Code section 459 allows reviewing courts to take judicial notice "of any matter specified in Section 452." Cal. Evid. Code § 459(a). For the reasons stated below, this Court should take judicial notice of the attached materials, which illustrate the importance of understanding how the public can use information that may be revealed in attorney invoices to oversee government conduct, and hold public agencies accountable for the choices they make in spending taxpayer money.

A. This Court Should Take Judicial Notice of the Attorneys' Fees Order Submitted as Exhibit A.

The ACLU respectfully requests that the Court take judicial notice of the Attorneys' Fees Order, submitted as Exhibit A, which is a document filed in a court proceeding and thus falls squarely within the scope of judicially noticeable material under Section 452(d). Evidence Code § 452(d) authorizes this Court to take judicial notice of, among other things, "[r]ecords of (1) any court of this state ... " and California courts routinely take judicial notice of court records for a variety of purposes. *See, e.g.*, *Magnolia Square Homeowners Ass'n v. Safeco Ins. Co. of America* (1990) 221 Cal.App.3d 1049, 1056-1057 (court can "take judicial notice of the truth of facts asserted in documents such as orders"); *County of San Diego v. Sierra* (1990) 217 Cal.App.3d

126, 128 n.2 (taking judicial notice of an income and expense declaration filed in a superior court case).

The Attorneys' Fees Order is highly relevant because it is an example of a case in which taxpayers may question the choices made by public agencies in defending a lawsuit by a former employee. It demonstrates why the public should have access to invoice information, to give citizens the tools they need to evaluate the true cost of aggressive litigation, and have informed conversations with the public agencies who decide which law firm to hire, and what constraints they should place on those firms, or with other members of the public.

B. This Court Should Take Judicial Notice Of The Articles Submitted As Exhibits B-G.

The ACLU also requests that the Court take judicial notice of the articles submitted as Exhibits B-G. Under Evidence Code §§ 459(a), 452(h) and 452(d)(2), this Court may take judicial notice of "facts … that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," which includes news articles. *See, e.g., Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807 & n.5 (taking judicial notice of newspaper articles to establish that topic generated public debate); *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 162 (taking judicial notice of newspaper articles to establish "widespread publicity" of incident). Similarly, Internet printouts also are the proper subject of judicial notice. *See Pollstar v. Gigmania Ltd.* (E.D. Cal. 2000) 170 F.Supp.2d 974, 978 (taking judicial notice of printout from plaintiff's web site); *Cairns v. Franklin Mint Co.* (C.D. Cal. 2000) 107 F.Supp.2d 1212, 1216 (taking judicial notice of pages from Warhol Museum's web site).

This Court can and should take judicial notice of the articles submitted with this Motion as Exhibits B-G, which demonstrate the type of information citizens can obtain from attorney invoices. For example, in *Int'l Federation of Prof. & Tech. Eng's v. Superior Court* (2007) 42 Cal.4th 319, 334, the Court relied on several articles that had been submitted by the newspaper. As the Court explained there, these articles "used information concerning public employee salaries to illustrate claimed nepotism, favoritism, or financial mismanagement in state and local government," and that "[t]hese examples, even when they reveal no impropriety, amply illustrate that disclosure of government salary information serves a significant public interest." *Id.* Here too, whether the underlying information is true or not, the articles submitted reveal the valuable reporting that can be done with the information at issue in this case.

CONCLUSION

For all of these reasons, the ACLU respectfully requests that the Court take judicial notice of Exhibits A-G.

Respectfully submitted this 28th day of March, 2016.

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Peter J. Eliasberg

DAVIS WRIGHT TREMAINE LLP
Jennifer L. Brockett
Rochelle L. Wilcox
Colin D. Wells
Diana Palacios

By: Rochelle Wilcox /cdw
Rochelle L. Wilcox

Attorneys for Real Parties in Interest
ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

DECLARATION OF COLIN D. WELLS

I, Colin D. Wells, declare:

1. I am an attorney admitted to practice before all the courts of the State of California and before this Court. I am an attorney at the law firm of Davis Wright Tremaine LLP ("DWT"), and one of the attorneys representing Petitioners ACLU of Southern California and Eric Preven (collectively, "ACLU"). The matters stated below are true of my own personal knowledge.

2. Attached as **Exhibit A** to this declaration is a true and correct copy of the Order Awarding Attorneys' Fees in favor of Plaintiff Danielle Baez against Defendants Burbank Unified School District and Craig Jellison, entered on July 11, 2014 in the matter *Baez v. Burbank Unified Sch. Dist.,* Los Angeles Superior Court Case No. BC372092.

3. Attached as **Exhibit B** to this declaration is a true and correct copy of a September 25, 2012 news article by Rex Dalton entitled "OC Families Face Fierce Fight for Special Ed Services," published in the *Voice of OC*, which was downloaded from the Internet at my direction from the following website: http://voiceofoc.org/2012/09/oc-families-face-fierce-fight-for-special-ed-services/.

4. Attached as **Exhibit C** to this declaration is a true and correct copy of a September 27, 2012 news article by Rex Dalton entitled "A 'Brotherhood' Fights Families Wanting Special Ed," published in the *Voice of OC*, which was downloaded from the Internet at my direction from the following website: http://voiceofoc.org/2012/09/a-brotherhood-fights-families-wanting-special-ed/.

5. Attached as **Exhibit D** to this declaration is a true and correct copy of an October 4, 2012 news article by Rex Dalton entitled "Questions Surround Attorneys' Actions in Special Ed Case," published in the *Voice of OC*, which was downloaded from the Internet at my direction from the following website: http://voiceofoc.org/2012/10/questions-surround-attorneys-actions-in-special-ed-case/.

6. Attached as **Exhibit E** to this declaration is a true and correct copy of an October 2015 article by Matthew Heller entitled "Think Twice Before Suing This School District" published in *California Lawyer*, which was downloaded from the Internet at my direction from the following website: http://www.callawyer.com/2015/10/burbank-unified-school-district-lawsuit/.

7. Attached as **Exhibit F** to this declaration is a true and correct copy of a January 23, 2014 article by Allison Wisk entitled "Lawyer fees add up in records cases[:] Some agencies pay thousands to handle information requests" published in *Dallas News*, which was downloaded from the Internet at my direction from the following website: http://res.dallasnews.com/interactives/records/records-costs.html.

8. Attached as **Exhibit G** to this declaration is a true and correct copy of an August 22, 2013 article by Katy Steinmetz entitled "Mediation Complete for San Diego Mayor Bob Filner, Details Still Confidential" published in *Time*, which was downloaded from the Internet at my direction from the following website: http://swampland.time.com/2013/08/22/mediation-complete-for-san-diego-mayor-bob-filner-details-still-confidential/.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 28, 2016, at San Francisco, California.

Colin D. Wells

PROOF OF SERVICE

I, Elizabeth Wyatt, declare as follows:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On March 28, 2016, I served the foregoing document described as:

MOTION FOR JUDICIAL NOTICE OF REAL PARTIES IN INTEREST ACLU OF SOUTHERN CALIFORNIA AND ERIC PREVEN; DECLARATION OF COLIN D. WELLS WITH EXHIBITS A-G

on the interested parties in this action as stated below:

Timothy T. Coates, Esq. Barbara W. Ravitz, Esq. GREINES, MARTIN, STEIN & RICHLAND, LLP 5900 Wilshire Blvd., 12th Floor Los Angeles, CA 90036	tcoates@gmsr.com bravitz@gmsr.com Phone: (310) 859-7811 Fax: (310) 276-5261 Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL
Mary C. Wickham, Esq. County Counsel Roger H. Granbo, Esq. Asst. County Counsel Jonathan McCaverty, Esq. Dep. County Counsel 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012-2713	jmccaverty@counsel.lacounty.gov Phone: (213) 974-1828 Fax: (213) 626-2105 Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL

Hon. Carolyn B. Kuhl
Presiding Judge
Los Angeles Superior Court
111 North Hill Street
Los Angeles, CA 90012

ACLU of Southern California, et al. v. County of Los Angeles, et al.
Case No. BS145753, Superior Court of California, County of Los Angeles

Clerk of the Court
Court of Appeal of the State of California
Second Appellate District
Ronald Reagan State Building
300 S. Spring Street
2nd Floor, North Tower
Los Angeles, CA 90013

County of Los Angeles Board of Supervisors, et al. v. Superior Court of The Los Angeles County, Respondent and ACLU of Southern California, Real Parties in Interest
Case No. 2d Civ. No. B257230, Court of Appeal of the State of California, 2nd Appellate Dist., Div. 3

Frederick R. Bennett III, Esq.
Court Counsel
Los Angeles Superior Court
111 North Hill Street, Room 546
Los Angeles, CA 90012

ACLU of Southern California, et al. v. County of Los Angeles, et al.
Case No. BS145753, Superior Court of California, County of Los Angeles

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 28, 2016 at San Francisco, California.

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

Elizabeth Wyatt
Print Name

Elizabeth Wyatt
Signature

TO THE HONORABLE TANI G. CANTIL-SAKAUYE, CHIEF JUSTICE OF THE STATE OF CALIFORNIA, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

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126, 128 n.2 (taking judicial notice of an income and expense declaration filed in a superior court case).

The Attorneys' Fees Order is highly relevant because it is an example of a case in which taxpayers may question the choices made by public agencies in defending a lawsuit by a former employee. It demonstrates why the public should have access to invoice information, to give citizens the tools they need to evaluate the true cost of aggressive litigation, and have informed conversations with the public agencies who decide which law firm to hire, and what constraints they should place on those firms, or with other members of the public.

B. This Court Should Take Judicial Notice Of The Articles Submitted As Exhibits B-G.

The ACLU also requests that the Court take judicial notice of the articles submitted as Exhibits B-G. Under Evidence Code §§ 459(a), 452(h) and 452(d)(2), this Court may take judicial notice of "facts … that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy," which includes news articles. *See, e.g., Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 807 & n.5 (taking judicial notice of newspaper articles to establish that topic generated public debate); *McKelvey v. Boeing North American, Inc.* (1999) 74 Cal.App.4th 151, 162 (taking judicial notice of newspaper articles to establish "widespread publicity" of incident). Similarly, Internet printouts also are the proper subject of judicial notice. *See Pollstar v. Gigmania Ltd.* (E.D. Cal. 2000) 170 F.Supp.2d 974, 978 (taking judicial notice of printout from plaintiff's web site); *Cairns v. Franklin Mint Co.* (C.D. Cal. 2000) 107 F.Supp.2d 1212, 1216 (taking judicial notice of pages from Warhol Museum's web site).

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CONCLUSION

For all of these reasons, the ACLU respectfully requests that the Court take judicial notice of Exhibits A-G.

Respectfully submitted this 28th day of March, 2016.

ACLU FOUNDATION OF SOUTHERN CALIFORNIA
Peter J. Eliasberg

DAVIS WRIGHT TREMAINE LLP
Jennifer L. Brockett
Rochelle L. Wilcox
Colin D. Wells
Diana Palacios

By: Rochelle Wilcox /cdw
Rochelle L. Wilcox

Attorneys for Real Parties in Interest
ACLU OF SOUTHERN CALIFORNIA and ERIC PREVEN

DECLARATION OF COLIN D. WELLS

I, Colin D. Wells, declare:

1. I am an attorney admitted to practice before all the courts of the State of California and before this Court. I am an attorney at the law firm of Davis Wright Tremaine LLP ("DWT"), and one of the attorneys representing Petitioners ACLU of Southern California and Eric Preven (collectively, "ACLU"). The matters stated below are true of my own personal knowledge.

2. Attached as **Exhibit A** to this declaration is a true and correct copy of the Order Awarding Attorneys' Fees in favor of Plaintiff Danielle Baez against Defendants Burbank Unified School District and Craig Jellison, entered on July 11, 2014 in the matter *Baez v. Burbank Unified Sch. Dist.*, Los Angeles Superior Court Case No. BC372092.

3. Attached as **Exhibit B** to this declaration is a true and correct copy of a September 25, 2012 news article by Rex Dalton entitled "OC Families Face Fierce Fight for Special Ed Services," published in the *Voice of OC*, which was downloaded from the Internet at my direction from the following website: http://voiceofoc.org/2012/09/oc-families-face-fierce-fight-for-special-ed-services/.

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8. Attached as **Exhibit G** to this declaration is a true and correct copy of an August 22, 2013 article by Katy Steinmetz entitled "Mediation Complete for San Diego Mayor Bob Filner, Details Still Confidential" published in *Time*, which was downloaded from the Internet at my direction from the following website: http://swampland.time.com/2013/08/22/mediation-complete-for-san-diego-mayor-bob-filner-details-still-confidential/.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on March 28, 2016, at San Francisco, California.

Colin D. Wells

PROOF OF SERVICE

I, Elizabeth Wyatt, declare as follows:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 and not a party to the within action. My business address is Davis Wright Tremaine LLP, 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On March 28, 2016, I served the foregoing document described as:

MOTION FOR JUDICIAL NOTICE OF REAL PARTIES IN INTEREST ACLU OF SOUTHERN CALIFORNIA AND ERIC PREVEN; DECLARATION OF COLIN D. WELLS WITH EXHIBITS A-G

on the interested parties in this action as stated below:

Timothy T. Coates, Esq. Barbara W. Ravitz, Esq. GREINES, MARTIN, STEIN & RICHLAND, LLP 5900 Wilshire Blvd., 12th Floor Los Angeles, CA 90036	tcoates@gmsr.com bravitz@gmsr.com Phone: (310) 859-7811 Fax: (310) 276-5261 Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL
Mary C. Wickham, Esq. County Counsel Roger H. Granbo, Esq. Asst. County Counsel Jonathan McCaverty, Esq. Dep. County Counsel 648 Kenneth Hahn Hall of Administration 500 West Temple Street Los Angeles, CA 90012-2713	jmccaverty@counsel.lacounty.gov Phone: (213) 974-1828 Fax: (213) 626-2105 Attorneys for Petitioners COUNTY OF LOS ANGELES BOARD OF SUPERVISORS and THE OFFICE OF COUNTY COUNSEL

Hon. Carolyn B. Kuhl Presiding Judge Los Angeles Superior Court 111 North Hill Street Los Angeles, CA 90012	*ACLU of Southern California, et al. v. County of Los Angeles, et al.* Case No. BS145753, Superior Court of California, County of Los Angeles
Clerk of the Court Court of Appeal of the State of California Second Appellate District Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	*County of Los Angeles Board of Supervisors, et al. v. Superior Court of The Los Angeles County, Respondent and ACLU of Southern California, Real Parties in Interest* Case No. 2d Civ. No. B257230, Court of Appeal of the State of California, 2nd Appellate Dist., Div. 3
Frederick R. Bennett III, Esq. Court Counsel Los Angeles Superior Court 111 North Hill Street, Room 546 Los Angeles, CA 90012	*ACLU of Southern California, et al. v. County of Los Angeles, et al.* Case No. BS145753, Superior Court of California, County of Los Angeles

☒ (BY MAIL) By placing a true copy of the foregoing document(s) in a sealed envelope addressed as set forth above. I placed each such envelope for collection and mailing following ordinary business practices. I am readily familiar with this Firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence would be deposited with the United States Postal Service on that same day, with postage thereon fully prepaid at San Francisco, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on March 28, 2016 at San Francisco, California.

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

Elizabeth Wyatt
Print Name

Elizabeth Wyatt
Signature

Victor L. George, State Bar No. 110504
Wayne C. Smith, State Bar No. 122535
LAW OFFICES OF VICTOR L. GEORGE
20355 Hawthorne Blvd., First Floor
Torrance, California 90503
Telephone: (310) 698-0990
Facsimile: (310) 698-0995
E-Mail: vgeorge@vgeorgelaw.com

Attorneys for Plaintiff
DANIELLE BAEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DANIELLE BAEZ,

Plaintiff,

v.

BURBANK UNIFIED SCHOOL DISTRICT, a business entity, form unknown; CRAIG JELLISON, an individual; and DOES 1 through 100, inclusive.

Defendants.

CASE NO. BC372092
[Assigned to the Hon. Mary Ann Murphy, Department 25]

NOTICE OF ENTRY OF AWARD OF ATTORNEY'S FEES

Complaint Filed: June 1, 2007
Trial Date: October 18, 2013

On July 11, 2014, in Department 25 of the Los Angeles Superior Court, the Honorable Judge Mary Ann Murphy awarded attorney's fees in favor of Plaintiff Danielle Baez and against Defendants Burbank Unified School District and Craig Jellison as follows:

1. $2,956,965.30 to attorneys Victor L. George, Wayne C. Smith and Elvis Tran of the Law Offices of Victor L. George; and,
2. $267,604.00 to Norman Pine and Beverly Pine of the law offices of Pine & Pine.

///

07/23/2014

EXHIBIT A

A true and correct copy of this Court's Minute Order dated 07/11/14, awarding said attorney's fees is attached as **Exhibit 1.**

Dated: July 22, 2014

LAW OFFICES OF VICTOR L. GEORGE

By: _____
VICTOR L. GEORGE
WAYNE C. SMITH
Attorney for Plaintiff,
DANIELLE BAEZ

07/23/2014

07/23/2014

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14 DEPT. 25

HONORABLE MARY ANN MURPHY JUDGE | C. GUERRERO DEPUTY CLERK

HONORABLE JUDGE PRO TEM | ELECTRONIC RECORDING MONITOR

1

NONE Deputy Sheriff | CHRISTINE KWON-CHANG Reporter

8:30 am BC372092

DANIELLE BAEZ
VS
BURBANK UNIFIED SCHOOL DISTRICT
AL

Plaintiff Counsel: WAYNE C. SMITH (X)
NORMAN PINE (X)

Defendant Counsel: NANCY DOUMANIAN (X)

170.6-O'DONNELL BY PLFT. 7/10/1

NATURE OF PROCEEDINGS:

1. PLAINTIFF, DANIELLE BAEZ'S MOTION FOR ATTORNEYS' FEES;

2. DEFENDANTS, BURBANK UNIFIED SCHOOL DISTRICT AND CRAIG JELLISON'S MOTION TO STRIKE/TAX COSTS;

3. PLAINTIFF, DANIELLE BAEZ'S MOTION TO STRIKE THE DECLARATION OF JAMES P. SCHRATZ FILED IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEYS' FEES;

The Order Appointing Court Approved Reporter as Official Reporter Pro Tempore was previously signed and filed. Christine Kwon-Chang, CSR #12143

The matter is called for hearing.

The Court order is as follows:

1. This action was filed on June 1, 2007 and has been pending for more than seven years. Three trials have been conducted comprising thirty-nine trial days. The second trial ended in a mistrial after five days of trial due to defense counsel's actions. The first trial, reversed on appeal, lasted sixteen days.

EXHIBIT 1

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14			DEPT. 25
HONORABLE MARY ANN MURPHY	JUDGE	C. GUERRERO	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	CHRISTINE KWON-CHANG	Reporter

8:30 am	BC372092	Plaintiff Counsel	WAYNE C. SMITH (X) NORMAN PINE (X)
	DANIELLE BAEZ VS BURBANK UNIFIED SCHOOL DISTRICT AL	Defendant Counsel	NANCY DOUMANIAN (X)
	170.6-O'DONNELL BY PLFT. 7/10/1		

NATURE OF PROCEEDINGS:

The third trial lasted seventeen days.

Eighty-three motions and twenty-nine ex parte applications were filed.

Thirty-nine court appearances for hearings were necessary (not including conference calls) in addition to thirty-nine trial days.

One appeal and one writ were argued and decided.

For the reasons stated on the record on June 11, 2014, attorney's fees are awarded in favor of plaintiff Danielle Baez and against defendants Burbank Unified School District and Craig Jellison as follows: $267,604 to attorneys Norman Pine and Beverly Pine and $2,956,965.30 to attorneys Victor L. George, Wayne C. Smith and Elvis Tran.

Defendant's declaration of Mr. Schratz did not contain an original signiture of Mr. Schratz as required by C.C.P. section 2015.5. C.f., C.C.P. section 128; Board of Trustees v. Superior Court (Umana) (2007) 149 Cal. App. 4th 1154, 1165. There is no provision for "electronic signitures" or electronic filings in the Stanley Mosk Courthouse. The original signiture of Mr. Schratz shall be filed by 7-15-14.

Later:

MINUTES ENTERED
07/11/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14			DEPT. 25
HONORABLE MARY ANN MURPHY	JUDGE	C. GUERRERO	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	CHRISTINE KWON-CHANG	Reporter

8:30 am	BC372092	Plaintiff Counsel	WAYNE C. SMITH (X) NORMAN PINE (X)
	DANIELLE BAEZ VS BURBANK UNIFIED SCHOOL DISTRICT AL	Defendant Counsel	NANCY DOUMANIAN (X)
	170.6-O'DONNELL BY PLFT. 7/10/1		

NATURE OF PROCEEDINGS:

The Court rules on the objections to the declarations as follows:

Goldberg declaration: Sustain as to all events in a different Los Angeles Superior Court case in Department 16. Otherwise overruled.

The objections to the following declarations are overruled: Elvis Tran, David de Rubertis, Beverly Pine, Norman Pine, Brian Panish, and Wayne Smith.

As to the Victor George Declaration, sustained as to paragraphs 19-21, otherwise overruled.

As to the Schratz declaration, the legal authorities are properly included in a memorandum of points and authorites, not a declaration. However, the objections are overruled.

The Court does not consider the inability to recover punitive damages against a public entity for any purpose.

2. The motion is striken with prejudice. Defendant's prior motion was striken for submission of a twenty-three page oversize brief without seeking or obtaining permission to file an oversize brief in violation of C.R.C. Rule 3.1113(d). The instant resubmitted motion is also an

MINUTES ENTERED
07/11/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14 DEPT. 25

HONORABLE MARY ANN MURPHY JUDGE C. GUERRERO DEPUTY CLERK

HONORABLE 1 JUDGE PRO TEM ELECTRONIC RECORDING MONITOR

NONE Deputy Sheriff CHRISTINE KWON-CHANG Reporter

8:30 am BC372092

DANIELLE BAEZ
VS
BURBANK UNIFIED SCHOOL DISTRICT
AL

Plaintiff Counsel WAYNE C. SMITH (X)
NORMAN PINE (X)

Defendant Counsel NANCY DOUMANIAN (X)

170.6-O'DONNELL BY PLFT. 7/10/1

NATURE OF PROCEEDINGS:

oversized brief, as denfendant has simply single spaced most of the brief in violation of C.R.C. Rule 2.108(1). Had the brief been one and a half spaced or double spaced as required by C.R.C.Rule 2.108(1), the brief would have been oversized.

Defendants were provided with one warning regarding the oversized brief for this motion and one opportunity to refile the motion. See 3-14-14 minute order. The Court is not required to permit a third chance to file a motion after that party fails to heed the first warning and submits a second oversized brief. Collins v. Hertz (2006) 144 Cal. App. 4th 64,74.

Counsel may not circumvent the page limitations of C.R.C. Rule 3.1113(d) by submitting a largely single spaced brief in violation of C.R.C. Rule 3.1113(d) and 2.108(1).

This is not an isolated incident. See orders dated 3-12-14 and 2-25-14.

3. The motion is denied for the reasons stated on on the record.

MINUTES ENTERED
07/11/14
COUNTY CLERK

07/23/2014

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14			DEPT. 25
HONORABLE MARY ANN MURPHY	JUDGE	C. GUERRERO	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	CHRISTINE KWON-CHANG	Reporter

8:30 am	BC372092	Plaintiff Counsel	WAYNE C. SMITH (X) NORMAN PINE (X)
	DANIELLE BAEZ VS BURBANK UNIFIED SCHOOL DISTRICT AL	Defendant Counsel	NANCY DOUMANIAN (X)
	170.6-O'DONNELL BY PLFT. 7/10/1		

NATURE OF PROCEEDINGS:

CLERK'S CERTIFICATE OF MAILING

I, the below-named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the minute order dated July 11, 2014 upon each party or counsel named below by placing the document for collection and mailing so as to cause it to be deposited in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown below with the postage thereon fully prepaid, in accordance with standard court practices.

Dated: July 21, 2014

Sherri R. Carter, Executive Officer/Clerk

By: _____
J. Schmesing, deputy clerk

07/23/2014

MINUTES ENTERED
07/11/14
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 07/11/14			DEPT. 25
HONORABLE MARY ANN MURPHY	JUDGE	C. GUERRERO	DEPUTY CLERK
HONORABLE 1	JUDGE PRO TEM		ELECTRONIC RECORDING MONITOR
NONE	Deputy Sheriff	CHRISTINE KWON-CHANG	Reporter

8:30 am	BC372092 DANIELLE BAEZ VS BURBANK UNIFIED SCHOOL DISTRICT AL 170.6-O'DONNELL BY PLFT. 7/10/1	Plaintiff Counsel Defendant Counsel	WAYNE C. SMITH (X) NORMAN PINE (X) NANCY DOUMANIAN (X)

NATURE OF PROCEEDINGS:

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Wayne C. Smith, Esquire
Elvis Tran, Esquire
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DOUMANIAN & ASSOCIATES
2626 Foothill Boulevard
Suite 250
La Crescenta, CA 91214

07/23/2014

MINUTES ENTERED
07/11/14
COUNTY CLERK

DANIELLE BAEZ v. BURBANK UNIFIED SCHOOL DISTRICT, et al.
LASC CASE NO. BC372092

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action; my business address is 20355 Hawthorne Boulevard, First Floor, Torrance, CA 90503.

On July 22, 2014, I served the foregoing document(s) described as **NOTICE OF ENTRY OF AWARD OF ATTORNEY'S FEES,** on the interested party(ies) in this action by placing:

[X] a true copy
[ ] the original

Nancy P. Doumanian, Esq.
DOUMANIAN & ASSOCIATES
2626 Foothill Blvd., Suite 250
La Crescenta, CA 91214
Tel: (818) 248-4700
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tami@doumanianlaw.com
Attorneys for Defendants Burbank Unified School District and Craig Jellison

Courtesy Copy to:

Norman Pine, Esq.
Beverly Pine, Esq.
PINE & PINE
14156 Magnolia Boulevard, Suite 200
Sherman Oaks, California 91423
Tel: (818) 379-9710
Fax: (818) 379-9749
E-mail: npine@pineandpine.com

[X] (**BY MAIL**, 1013a, 2015.5 C.C.P.)
I deposited such envelope in the mail at Torrance, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[ ] **(BY FACSIMILE)** I also faxed a copy of said document(s) to all parties where indicated to the fax number which is printed under each address on this Proof of Service.

[ ] **(BY OVERNIGHT DELIVERY)** I caused such document(s) to be delivered via overnight service by Norco Overnite Service.

Executed on July 22, 2014, at Torrance, California.

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

Sonia E. Revolorio

07/23/2014

HEALTH NEWS

OC Families Face Fierce Fight for Special Ed Services

By REX DALTON September 25

First in a three-part series. Read parts two (http://voiceofoc.org/healthy_communities/article_3e63e15c-08b6-11e2-8381-0019bb2963f4.html) and three (http://voiceofoc.org/countywide/county_government/article_60ab1bec-0e2c-11e2-8bc1-001a4bcf887a.html).

In the autumn of 2003 with apprehension running high, Carlos, an autistic youngster from a broken home, arrived for the second grade at Garden Grove's Cook Elementary School.

Alexis Baquerizo, Carlos' aunt and at the time his newly named guardian, knew he would face difficult challenges. But the reality of obtaining special education for her nephew was worse than even she imagined.

His first teacher inappropriately labeled him as "retarded," saying he probably would never be able to add or subtract. The teacher's harsh words only made Baquerizo work harder with Carlos' home lessons.

Before the end of that year, Carlos had won mathematics contests for his second grade class, besting about 20 students who didn't face his challenges.

Today after years of special services, a significant amount of which Baquerizo had to pay for out of her own pocket, Carlos excels at college level algebra.

But instead of accolades, Baquerizo says she earned the ire of Garden Grove Unified School District officials, who have for a decade fought her attempts to have all of the services, which are required under state and federal laws, to be paid for by the district.

At one point, Baquerizo said, she learned from teachers that a top administrator reportedly threatened to break her financially and emotionally to drive her out of Garden Grove so the district wouldn't have to provide Carlos' special education services. The district denied the allegation, but it was supported by some school staff in legal testimony.

EXHIBIT B

The result has been a series of costly legal skirmishes in state hearings and federal courts that continue to this day. And Carlos' case is just one of a number of instances where hard-line stances by Orange County school districts have led to expensive conflicts with families of special-needs children.

Garden Grove Unified officials declined to discuss Carlos' case, citing privacy and legal restrictions, which often keep such disputes out of the public eye.

The Rights and Costs of Special-Needs Children

Under the federal Individuals with Disabilities Education Act [IDEA] and state law, districts are required to provide a free appropriate public education to youths with disabilities from birth to 21 years of age. And though districts and families are often at odds over what assistance is needed, it can include specialized instruction; daily or weekly speech, occupational or psychological therapies; or special schools for those with severe emotional issues.

The cost of providing these services can easily spiral, with districts spending tens of millions of dollars a year on special education, depending on the number of eligible students. District general funds are also tapped to augment state and federal dollars, which for years have not kept pace with needs.

But even when taking these realities into account, special education experts say resistance to paying for services is so ingrained among school districts that they will spend hundreds of thousands of taxpayer dollars on attorney fees — amounts that in some cases dwarf the costs of the services sought — to deny or not reimburse families for the educational needs.

And though special education disputes are common throughout California and the nation, family attorneys and special education advocates say district legal resistance in Orange County is among the fiercest in the country.

"There is room for problem solving and compromise" when districts seek a balance, said Irvine-based Maureen Graves, a family attorney and founder of the California Association for Parent-Child Advocates.

"When school districts become obsessed with defending their original instructional plans, discrediting families and keeping parents in the dark, disputes escalate. Schools and families suffer," she said.

Graves and other advocates say districts direct streams of funds to a small cadre of attorneys to fight families seeking special education services, which vary from tests costing a few thousand dollars to individual class aides to residential placement in highly sophisticated, out-of-state facilities.

Additionally, some local districts, including Garden Grove Unified, have refused to publicly disclose the costs, which an open-government expert says is a violation of state law.

Given that Baquerizo estimates her legal bills over the past five years alone were about $350,000, the district's are likely far higher. The most recent battle was over about $14,000 in services annually and prior skirmishes have topped $50,000 in annual costs.

Carlos' case is one an example of this pervasive war of wills between families and districts. Others include:

- Los Alamitos Unified School District accumulated $783,000 in legal bills as the district fought to prevent a Spanish-speaking family from videotaping a school education planning session so the mother could better understand discussions, district records show.

- Orange Unified School District in June lost a costly case in federal court after it sued a family of an autistic child in an attempt to avoid paying for a private-school program. The district sued in 2011 after a state administrative hearing decision approved the requested services, with the federal court noting the district repeatedly improperly developed an educational plan. On Aug. 6, a federal judge ordered Orange Unified to pay $153,000 for the services of Bruce Bothwell, the family's Long Beach-based attorney. However, the district refuses to reveal how much it paid its attorneys for the case. There also is no record that the school district's elected board publicly voted on filing the lawsuit, which authorities say is possibly a violation of state law.

- In a Capistrano Unified School District case that ended earlier this year, the district was ordered to pay $117,000 of the family's legal bills along with $20,000 of reimbursement for services. But the family was denied reimbursement for about $100,000 in other services and more on unreimbursed legal fees. Capistrano Unified spent at least $238,000 for its attorney in the case, according to records released by the district.

Trustees Often in the Dark

A Voice of OC survey of Orange County cases from tony enclaves to working-class neighborhoods shows school districts repeatedly follow such courses, often with little follow-up oversight by elected trustees.

Noting Orange County cases prompt her at times to "groan," Marcy J.K. Tiffany, a Torrance-based attorney for families, said: "Districts always push back there. At times, you scratch your head and wonder if there is any adult supervision."

Superintendents appear to try to "save face," she added, by using district funds for legal fees to "defend their reputations."

Marc Ecker, superintendent of the Fountain Valley Unified School District, complained in an interview that families with disabled children use the federal law "to hold the districts hostage" to win services.

When questions are raised about school district stances on special education, Ecker has said in interviews: "No good deed goes unpunished."

Such comments prompt families and even some school trustees to note that the resistance is similar to objections to racially integrate American schools. Indeed, Los Alamitos Unified in the videotape case hired an Atlanta law firm that touted aiding 100 school districts in civil rights battles.

Among those who recognized the correlation was Ginny Fay Aitkens, a trustee at Saddleback Valley Unified School District in Mission Viejo.

"I understand where the parents are coming from." Aitkens said. "It would be fabulous if the system was not so confrontational. This does need a solution."

George West, president of the Garden Grove Unified board and dean of education at the Christian Hope International University in Fullerton, took issue with Ecker's comment.

"I would never use the term 'holding the district hostage,' " West said. "Parents want the very best, and we want the district to do the best. But we don't always agree with what the process should be."

The issue could come into play in a lawsuit filed earlier this year in U.S. District Court in Sacramento.

Parent associations sued the California Department of Education for allegedly turning a blind eye to what they see as widespread school district violations of state and federal law for free and appropriate education. Discrimination against minority groups also is alleged. State officials declined comment, but they denied such allegations in court filings.

When Roni Sagy, the San Francisco-based lead attorney for the families, heard descriptions of Orange County events, she said, "It's worse than I thought." She plans to review Orange County cases.

Superintendents and school board trustees continue to point to their increasingly tight budgets to explain their confrontational attitude for access to special education services.

For instance, Garden Grove Unified officials say direct costs for 5,015 special education students was $62.6 million for the 2010-11 school year. Special education expenditures included nearly $13 million in general funds from an overall budget of $458 million, officials added.

State reports show that nine of the county's 28 school districts — 143 statewide — are facing financial insolvency. These include Garden Grove and Capistrano Unified.

In Saddleback Valley, officials say the district last school year had 3,355 special education students with direct costs budgeted at $46 million, of which $15 million was from district general funds.

Desperate for funds, Saddleback Valley trustee Ginny Fay Aitkins has proposed a tax increase. "I get stone silence," she said. "It all boils down to special education becoming a ludicrously expensive proposition."

While district trustees can't avoid overall budget issues, interviews show elected officials often know little about the legal expenditures to fight families seeking services.

In Garden Grove Unified, West, the board president, said he could not recall any report on legal costs of Carlos' case in his four years as a trustee. Neither could two other trustees who served during the last two years.

Carlos' case only grabbed the board's attention last December, when a group of parents came to a meeting to complain.

High-Priced Lawyers, Possible Brown Act Violations

Legally, a public agency like a school board may discuss lawsuit strategy and decisions in closed session, but state law requires a board to approve a lawsuit, with that action being recorded in publicly available meeting board minutes.

There are no public minutes reflecting Orange Unified's lawsuit against the autistic boy, known only as C.K. in court documents, said an attorney for the school board. Orange Unified board President Timothy L. Surridge refused to comment.

In the Los Alamitos Unified videotaping case, the district engaged Charles L. Weatherly Sr., an Atlanta attorney known nationally for high billings.

For 2006, district records show he billed the school district $585,000. When an Orange County legal firm's costs were added in, records show the total billed in the end last year hit $783,000.

Los Alamitos' trustees were informed of the rising legal costs, recalled board President Meg Cutuli, who served during the litigation.

"It was a very difficult decision to go forward," she said, hinting the family had other issues she couldn't discuss for legal reasons. "I hate to say we won, as we did in federal court. Is it a true victory?"

With her district seeking a better "working philosophy" for such cases, Cutuli said, she "is really bothered" that the federal government has never paid the full amount it promised, thereby saddling districts with costs.

In Saddleback Valley, Aitkins said that during the last school year, this translated to a dozen instances where the district squared off in a state administrative hearing against a family over special services.

There were settlements in eight cases before a hearing. Three went to hearings where the district won. In the fourth both sides prevailed on aspects of the dispute, she said.

Attorneys representing families point to such hearings as an example of divisive stances by the school districts. Each case produces legal bills for the school district. Families are forced to foot their own legal tab, often without a chance of recovery.

Poita A. Cernius, a parent in the Newport-Mesa Unified School District, said her decades-long fight for services for her now 17-year-old autistic son taught her a telling lesson.

"It all depends on who is at the top," said Cernius. "He or she sets the tone. Some officials in charge of special education have been evil, others good."

When her son was 3, the district attempted to avoid paying for special education, blaming his developmental issues on a brain tumor the child had survived. In a legal fight, she said, she and her husband, both corporate attorneys, uncovered school district documents showing specialists had attributed his educational handicaps to autism.

The family won the services it was seeking, but it cost them about $30,000 in legal fees.

"We understand there are limited funds for these types of kids," Cernius said. "But the district was wasting money by fighting and not talking. We always have been willing to share in the cost. But they would take a hard-line approach, slam you, stonewall you, and lie and cheat, hoping you'd break down."

Newport-Mesa officials did not return repeated calls for comment.

A Need to Speak Out

Because families with active legal cases still have children in the districts, many declined interviews.

"People are gun-shy," said Cernius. "They are afraid of being stomped on by the district." Even some attorneys declined interviews, fearful of judicial attacks.

Baquerizo, however, said she opted to speak to show other families how services have helped Carlos. The family and district have been through a bewildering array of proceedings, from five state administrative hearings to multiple federal court cases.

Last October, the family won a vital legal battle when Garden Grove Unified attorneys unsuccessfully appealed to the U.S. Supreme Court.

In that case, the U.S. Ninth Circuit Court of Appeals in San Francisco ruled Garden Grove Unified had to reimburse the family for services at a nonpublic facility.

The earlier, precedent-setting decision means students throughout California and eight other Western states should have easier access to certain private programs.

Yet Garden Grove Unified continues to fight over reimbursement for nonpublic services Carlos received in other years.

In July, the district prevailed in a state administrative hearing, with an administrative judge rejecting reimbursement for such services. Baquerizo again went to federal court.

Garden Grove Unified is trying to force Carlos into a school program the family says is inappropriate and more costly. The classes have students with more severe disabilities, they say, and costs are $42,000 a year, three times the cost of the program he is attending.

"It is insane," said Baquerizo. "All this because of Carlos' desire to learn."

Please contact Rex Dalton directly at rexdalton@aol.com (mailto:rexdalton@aol.com)

HEALTH NEWS

A 'Brotherhood' Fights Families Wanting Special Ed

By REX DALTON September 27

Part two of three parts. Read part one here (http://voiceofoc.org/oc_central/article_8b9cebf2-0722-11e2-aa19-001a4bcf887a.html) and part three here (http://voiceofoc.org/countywide/county_government/article_60ab1bec-0e2c-11e2-8bc1-001a4bcf887a.html).

Entering federal court in 2008 to fight for special education for her autistic nephew, Alexis Baquerizo knew she was facing an entrenched, deep-pocketed foe, the Garden Grove Unified School District.

Still she was stunned to learn in 2010 that every public school district in Orange County had aligned against them, using taxpayer money to oppose Carlos.

An obscure but powerful public agency agreed to pay attorney fees in part and deploy its considerable political clout to help Garden Grove Unified, which had fought Baquerizo since 2003.

The agency is the Orange County Special Education Alliance, so little known that even some school district trustees had never heard of it. It is a joint powers authority similar to a water or a fire protection district.

But the alliance takes things a step further, according to interviews and documents. It fights families seeking special education services under state and federal laws. Such an agency is so rare that state that national leaders in the special education field said San Diego is the only place with a similar organization. San Diego's, they said, is far less active.

"I'd never heard the name," said Baquerizo, recalling when her attorney told her the alliance chipped in $10,000 to help Garden Grove appeal a federal lawsuit Carlos was winning.

The alliance was branded "a slush fund to batter kids" by Brian Allen, a child advocate who has practice in Orange County for more than a decade. He is among those who have alleged the alliance violated the state's open meetings law.

Marc Ecker, longtime superintendent of the Fountain Valley Unified School District who chairs the alliance, said the organization has not violated any laws and generally denies allegations like the one leveled by Allen.

EXHIBIT C

'A Brotherhood'

Formed by superintendents of the county's 28 school districts, the alliance grew from deep resistance to the federal Individuals with Disabilities Education Act, which is intended to help students with various developmental handicaps receive a free and appropriate public education.

Because the federal government never lived up to its original goal for funding special education, school districts became increasingly alarmed as they spent more general fund dollars to meet growing family requests for assistance.

When launching the alliance in 2005, one superintendent in a Los Angeles Times article called the alliance "a brotherhood." Another superintendent claimed they were "getting clobbered" by families, who felt school districts were like a "goose laying the golden egg" to be tapped at will.

Today, Ecker describes the agency's goals as aiding districts with legal costs, professional development training for district staffs and lobbying of state and federal officials either for more money or changes in law.

In particular, the lobbying efforts are for "relieving districts of onerous requirements for serving children with special education needs," said Ecker.

The alliance also uses top-notch professionals to train community advisory committees, which are required by state law to reduce strife between school district officials and families.

But even this aspect of the alliance's mission has generated controversy.

While these committees can and do provide some assistance, interviews show they also can struggle to meet the challenge. Their memberships can be politicized, for instance, by those appointed, who then pay lip service to resolution efforts, say families.

For example, a trustee praised the committee in the Newport-Mesa Unified School District as substantially effective, but Poita A. Cernius, a parent who has dealt with the committee for 14 years, called it "a squawk box for district administrators."

Newport-Mesa Unified's committee didn't respond to interview requests.

How the Alliance Operates

The alliance meets infrequently and irregularly at the Orange County Department of Education building in Costa Mesa. For a quorum, it needs but three superintendents from the 28 districts, who are joined by school district defense attorneys and other school officials.

Ronald D. Wenkart, general counsel for the county education department, and Lysa M. Saltzman, an attorney in Wenkart's office, have aided the alliance. As staff,the alliance funds a single consultant, who officials said keeps some of the organization's records at her home.

Each Orange County school district typically is assessed 20 and 50 cents per student per year to fund the alliance's operations. The annual assessment, however, isn't always levied. This year the alliance has approximately $425,000 on hand, according to documents.

In its effort, the alliance helps districts fight families with children with issues that include developmental disorders like autism, traumatic brain injuries and disabled foster children being aided by guardians. In any given year, the alliance might by helping defend against up to five lawsuits.

The largest single category in the alliance's annual budget is for litigation support for districts, budgeted this year for at least $75,000. The agency's lobbyist costs $12,000. The alliance projects expenditures of $200,000 in 2012.

In every case, reports show, the alliance took a position against a family rather than supporting one.

Beyond its efforts locally, the alliance has sought to aid the filing friend-of-the-court or amicus curiae briefs with the U.S. 9th Circuit Court of Appeals in San Francisco. It specifically selects cases that might win precedent-setting rulings in favor of school districts.

Among the cases the alliance has joined are:

- In 2010, records show the Alliance paid half of Brea Olinda Unified School District's $22,000 in legal bills when it successfully sued a family in U.S. District Court in Santa Ana to overturn a state administrative hearing decision continuing their child's special education. The family wanted to ensure that the child was protected to continue to receive services like occupational therapy for his attention deficit disorder issues, but the district objected. The case was eventually settled privately.

- In 2009, the alliance contributed $5,000 to a joint effort by Newport-Mesa Unified and the county Department of Education to avoid paying to place a foster child in an expensive, out-of-state specialized facility. Under California law, the district where a family resides typically would be responsible for the service, which could run to $100,000 a year. But Newport-Mesa and the county fought over the legal definition of who was the "responsible adult" in an effort to shift the cost of care to the state.

- In an important appellate decision, the alliance contributed $22,500 in 2007 to Saddleback Valley Unified School District for a case that limited how much families can collect for attorney fees when they accept certain settlement offers.

"It really screws parents over," said Bonnie Z. Yates, a Los Angeles attorney who represented a family seeking about $24,000 for attorney fees. Questions of law on complex issues involving such settlement offers remain undecided, she said.

But alliance and school district officials far beyond Mission Viejo were happy, because the case put them in a stronger position during settlement discussions held before a state administrative hearing is convened.

The alliance review committee, which decides what cases the organization takes up, includes S. Daniel Harbottle, a Costa Mesa attorney who represents school districts in some of the cases the alliance supports. Harbottle's law group represents at least nine districts in the county.

But how much his group is paid isn't known, because Harbottle and a county education department attorney have advised school districts that they need not disclose payments, even years after individual legal actions were completed.

Terry Francke, one of California's preeminent experts regarding public records and Voice of OC's open-government consultant, says such costs should be disclosed.

Harbottle declined to respond to interview requests.

'They Threw Me Out'

Trustees from various school boards, particularly those elected in recent years, often are unaware that the alliance exists or that districts are funding it.

When Voice of OC described the alliance to Bao Nguyen, a Garden Grove trustee appointed in June 2011, he said, "That doesn't sound right."

Nguyen, who is running for election in November, expressed concern about the issue but stopped responding to interview requests. That stance is now taken by other Garden Grove trustees and those from other districts that are represented by Harbottle.

Katrina Foley, a former Costa Mesa city councilwoman elected to the Newport-Mesa board in 2010, also was unaware of the alliance until interviewed.

When asked how much her district pays to the alliance, Foley said, "I'm taking notes to ask."

Initially, Foley and Newport-Mesa staff participated in interviews and provided information. But then she and other administrators, including district spokeswoman Laura Bush, refused to respond. Harbottle represents Newport-Mesa.

In its early years, the alliance was accused of violating state open meeting laws during its legal strategy sessions, according to interviews and agency minutes.

Frequent complaints were made by Ronald Lackey, a Dana Point educational psychologist, former school administrator, and child advocate who was active for years in efforts to resolve conflicts between districts and families.

"He looked at our effort as an illegal act," recalled Ecker. "He said we were collaborating in a conspiracy against children with handicapped needs; that our effort was to circumvent the law. He couldn't understand where we were coming from; he opposed all we did."

Lackey couldn't be reached, but Allen, his former partner in child advocacy, confirmed Lackey's actions. Alliance minutes reflect Lackey's continued objections at various meetings. Attorneys like Tania L. Whiteleather of Lakewood recalled how Lackey battled the alliance for years.

Allen said Lackey believed "the alliance was having secret meetings." Alliance

minutes show its leaders ignored Lackey.

At same time, Lackey also complained at Capistrano Unified School District meetings about its treatment of special education children. Capistrano Unified was the ideological crucible from which the alliance was born, according to both the alliance and school districts.

Thus Lackey's objections regarding special education served as the catalyst for school board actions that eventually led to controversies that consumed the district for several years. The Orange County district attorney's office probed alleged illegal meetings, trustee recalls and the departure of James Fleming, then superintendent of the district and credited by alliance officials with creating the organization.

Whiteleather, who represents families seeking special education from districts, said that at least five years ago she was kicked out of an alliance meeting after alleging that board members were violating the state's open meetings law by including lawyers in the discussion of a case in which they had no direct involvement.

Whiteleather said, "They threw me out" and continued their discussion behind closed doors.

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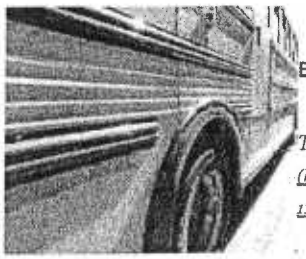
COUNTY GOVERNMENT

Questions Surround Attorneys' Actions in Special Ed Case



By REX DALTON October 4

Third in a three-part series. Here are parts one (http://voiceofoc.org/oc_central/article_8b9cebf2-0722-11e2-aa19-001a4bcf887a.html) and two (http://voiceofoc.org/healthy_communities/article_3e63e15c-08b6-11e2-8381-0019bb2963f4.html).

To avoid paying for special education services for a teenager with autism, records show Garden Grove Unified School District attorneys may have engaged in an unethical scheme to sway the U.S. Ninth Circuit Court of Appeals.

Documents show the legal maneuver last year involved an apparent attempt to disguise the origins of a potentially important petition – a friend-of-the-court or amicus curiae brief that purportedly offered an independent view of the disputed services in the case.

The Ninth Circuit Court's policy for amicus briefs requires a submitting attorney to disclose whether parties in the case authored or paid for the petition so judges will know whether it is a truly independent view.

In this case, federal court records show that the amicus brief was filed in San Francisco on behalf of a little-known public insurance organization, whose law firm told the court no other attorneys authored or paid for the petition. However, meeting minutes of the insurance organization's board show that attorneys for Garden Grove Unified prepared the brief.

If a party to a case is involved in authoring an amicus brief without disclosure, "It is an ethical violation," said Gregory C. Sisk, who teaches ethics at the University of St. Thomas School of Law in Minnesota.

Such an ethical violation could lead to disbarment from a circuit court's bar, which in turn could prompt California Bar sanctions, said Sisk.

Garden Grove Unified officials refused to comment on the issue, as did their attorney in the litigation, S. Daniel Harbottle, who heads a Costa Mesa law firm known for aggressive actions on behalf of school districts.

Symbolic of a Larger Battle

EXHIBIT D

On Aug. 13, 2008, an amicus brief was filed by Lyndsy R. Rutherford, who, court records show, previously had represented Saddleback Valley while working for Harbottle. Rutherford and Harbottle represented Saddleback Valley while they were at Rutan & Tucker, a prominent Costa Mesa firm that represents school districts. Harbottle left in 2009 to start his own firm.

Rutherford filed her brief on behalf of the California School Board Association Education Legal Alliance, a Sacramento-based group that advocates for more than 1,000 school boards. She argued against reimbursing the family for attorney fees.

For the amicus brief, Rutherford listed her Huntington Beach home address, which she had began using with the California bar on April 18, 2008.

On Jan. 15, 2009, Rutherford switched her California bar address to the Los Angeles office of Fagen, Friedman & Fulfrost. Rutherford didn't respond to interview requests.

In the end, Saddleback Valley prevailed in the appellate court. The decision wasn't published so it didn't set a precedent. The family still got no attorney fee reimbursement.

"It was egregious how the district behaved," said Bonnie Z. Yates, the Culver City attorney who represented the family in the Saddleback Valley case. The family has remained anonymous.

But Saddleback Valley officials say they must take such actions to limit special education costs from draining district budgets.

Please contact Rex Dalton directly at rexdalton@aol.com (mailto:rexdalton@aol.com)

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THINK TWICE BEFORE SUING THIS SCHOOL DISTRICT

Think Twice Before Suing This School District

Burbank Unified's relentless defense strategy draws judicial ire.

BY MATTHEW HELLER | OCTOBER 2015

On August 7, 2014, the five trustees of the Burbank Unified School District gathered for their regular public meeting. Although lawsuits against government agencies usually are discussed only in closed session, Mike Nolan, a local gadfly and blogger, had something he wanted to get off his chest.

The Burbank Unified School District administrative offices. (Vern Evans)

Five weeks earlier a Los Angeles County Superior Court judge had awarded attorneys for Danielle Baez—a former administrative secretary to the district's assistant superintendent—$3.2 million in legal fees in a hostile-work-environment case against the district and its chief facilities officer, Craig Jellison. Baez alleged that Jellison had sexually harassed her, culminating in an assault in July 2006. (*Baez v. Burbank Unified Sch. Dist.*, No. BC372092 (Los Angeles Super. Ct. filed June 1, 2007).)

In November 2013 after a 17-day trial—the third in the case—a jury found the district liable for a hostile work environment but awarded Baez just $200,000 in compensation—one-sixteenth the court's hefty award of attorneys fees and costs.

The district had been represented by Nancy P. Doumanian, a La Crescenta attorney whose clients have included numerous other municipal agencies. During the hearing on Baez's motion for attorneys fees, Judge Mary Ann Murphy said Burbank Unified "fought this case with a zeal that one doesn't see very often." She noted that its lawyer had "serially and almost routinely fail[ed] to comply with the rules of the court," dragging out the litigation and driving up its cost.

"A decision was made by an appointed or elected official that this is the way they are going to litigate their cases for whatever reason, and when they litigate that way, they have to pay the other side's counsel," Murphy concluded.

In the school board chambers, Nolan stood at the lectern, a mane of white hair flowing to his shoulders, and launched into the board members seated at a semicircular table. "I am absolutely outraged to stand before you and hear that, for seven years, a case was dragged on," he fumed.

The community, Nolan continued in his gruff voice, "can't tolerate litigation over an employee that endures seven years. It makes no sense." And "the people of Burbank deserve an explanation, not from the staff, [but] from you five [trustees] ... an accounting as to what made you believe that this course of conduct was in the best interests of the students and the taxpayers of Burbank."

"Why would we tolerate [our attorney] ... not fil[ing] things in a timely manner with the court?" he asked. "How would we tolerate having no points and authorities being filed when they're required?"

The district superintendent, Dr. Jan Britz, who had sat beside Doumanian at the counsel table during the second and third trials in the case, gave the expected response. "Because of litigation, I think I'm going to decline and not talk about that case," she told Nolan.

> But board vice president Larry Applebaum sighed and shifted in his high-backed chair. Despite the legal constraints, there was something he wanted to say. "We'll see how much of a tightrope [I] can walk here," he began.
>
> Applebaum defended the district's handling of the case and asked for the public's trust. "We're pretty educated up here, and we're pretty astute. We would not willy-nilly go down a road that we didn't feel confident was the right road, and the road that protected the district," he said. And then, in a couple of sentences, he offered insight into why the district had chosen to fight Danielle Baez in court so hard and for so long.

EXHIBIT E

Larry Applebaum, Burbank Unified school board. (Tim Berger/Burbank Leader, Used with Permission)

"You wouldn't want this to become a regular thing," Applebaum said. "So sometimes you have to do the right thing to make sure that the people understand that we don't want this to be a regular thing."

Even after seven years, Burbank Unified isn't finished litigating the *Baez* case. It is appealing both the jury verdict and the award of attorneys fees, adding lawyers at Los Angeles's Greines, Martin, Stein & Richland to the defense team.

If the appeal is unsuccessful, the case could cost the district as much as $5.5 million, including what it has paid Doumanian, awards to Baez's attorneys, and accrued interest. While that amount is enough to upset constituents like Nolan, it's a fraction of the district's budget—an estimated $135.6 million this fiscal year.

Moreover, those legal costs would be picked up by the district's liability insurance pool, operated under the auspices of the West San Gabriel Valley Joint Powers Authority.

"Sometimes you have ... to make sure that the people understand that we don't want this to be a regular thing. "

—LARRY APPLEBAUM, BURBANK UNIFIED SCHOOL BOARD

But the Burbank district has taken a public relations hit. Gregory Sousa, a law school graduate who ran for a seat on the school board earlier this year, told the *Burbank Leader*, "Because the trial judge stated a reasonable basis for the amount awarded, the appeal is likely to fail—and in the end, our schools will lose more than $3.2 million that are badly needed elsewhere."

The *Baez* case may be only the tip of an iceberg, according to plaintiffs lawyers with substantial experience litigating against other school districts.

John C. Manly, a veteran sexual-abuse litigator at Manly, Stewart & Finaldi in Irvine, says defending cases tooth and nail often has the blessing of the joint powers authorities (JPAs) that administer school district liability policies. "They like to take the gloves off and fight," he says. "It doesn't matter what the merits of the case may be."

Manly believes many would-be plaintiffs have gotten the message. "If you're a plaintiffs lawyer," he says, "you know it's going to cost you $250,000 to $500,000—and three to four years, if not more time—to get a real recovery. [The JPAs] know 95 percent or more of plaintiffs lawyers won't take these cases."

David M. Ring, of Taylor & Ring in Los Angeles, adds: "A lot of defendants, including school districts, will fight aggressively in hopes of dissuading the [plaintiff's] lawyer from bringing another case against the same district down the road. It's absolutely a tactic they use."

When Danielle Baez first walked into the Torrance law offices of Victor L. George and Wayne C. Smith, it was early 2007 and the veteran plaintiffs attorneys had recently won a $5 million sexual-harassment verdict against a Malibu restaurant. That verdict included punitive damages, a remedy not available against a public entity. But George and Smith knew that if Baez prevailed in a lawsuit against Burbank Unified alleging a hostile work environment and harassment, she would be entitled under California's Fair Employment and Housing Act (FEHA) to recover reasonable attorneys fees and costs. (Cal. Gov't Code § 12965(b).)

"If you're a plaintiffs lawyer, you know it's going to cost you $250,000 to $500,000—and three to four years, if not more time—to get a real recovery. "

—JOHN C. MANLY, IRVINE PLAINTIFFS ATTORNEY

As George listened to Baez recount her experiences as a district employee, he says, she "seemed very credible ... like a solid member of society. A mom, working, two children." When she described what Jellison had allegedly done to her, "I didn't see any reason why she should dream up this story."

Baez began working for Burbank Unified as a "budget tech" in May 2004. According to court records, during her first year at the district she considered Jellison, one of her superiors, a friend. But in December 2005 he allegedly began pursuing a sexual relationship with her, barraging her with sexually charged emails. "You let Doctors examine it, strangers wax it, Your husband poke it and you play with it but your friends aren't allowed five minuets [sic] with it. Now that hardly seems fair!" he wrote in one.

Baez replied in an email, "Great Response. I actually laughed out loud," and then she inquired, "Lunch tomorrow?"

The following July 26, Baez alleged, Jellison "lured" her to his office to discuss the possibility of a transfer to his department. After locking the door, according to Baez's court filing, he started to assault her, putting his hands up her skirt and grabbing her breast. She protested and tried to leave the office, but Jellison caught up with her and pinned her to the wall. She was able to flee only after slapping him in the face.

However, it wasn't until February 2007 that Baez reported Jellison's alleged misconduct to anyone at Burbank Unified. At the time, the district was investigating allegations that Baez was having an inappropriate sexual relationship with her supervisor, assistant superintendent Steve Bradley. She denied she was having an affair and told the district's investigating attorney that Jellison had assaulted her.

The attorney, Sukhi Sandhu, expanded her investigation of the Bradley-Baez relationship to interview Jellison, who denied any assault. According to court documents, Sandhu concluded there was "sufficient credible evidence to support some of the allegations" Baez made and that "the conduct that took place in the room more closely comports with Ms. Baez's version of the events than Mr. Jellison's."

But in a letter to Baez on May 30, 2007, the district superintendent at the time, Gregory Bowman, informed Baez instead that Sandhu had determined there was insufficient evidence to support her charges. "[T]he Investigator determined that while certain conduct may have taken place between you and Mr. Jellison in Mr. Jellison's office that day, it was either not as you described and/or not unwelcome." Two days later, Baez, who by then had taken a medical leave from her job and not returned, filed her lawsuit, alleging sexual harassment and related claims.

Baez's lawsuit set into motion a well-oiled litigation defense system that is used by most California school districts. A claim is referred to a district's insurance pool or joint powers authority, which is sometimes managed by a third-party administrator such as Marsh & McLennan, Keenan & Associates, or Driver Alliant Insurance Service. The JPA or administrator then retains defense counsel to litigate the claim. "It's a very similar situation to the insurance industry," says Daniel R. Shinoff, a veteran defense litigator with Stutz Artiano Shinoff & Holtz in San Diego.

School district defense teams have no shortage of business. "You have an employee population that is, No. 1, very sophisticated and, No. 2, very comfortable in asserting their rights," says Shinoff. "So there tends to be a lot of litigation regarding public employees." In the past three fiscal years, for instance, the San Diego County Schools Risk Management JPA steered $4.6 million in billings to Stutz Artiano—more than 70 percent of the total legal work it distributed.

A report by School Services of California, Inc., a Sacramento-based consulting firm with a clientele of public school agencies, found that in three school years, 1995–96 through 1997–98, some 650 California districts spent about $250 million on tort-liability expenses that "could have gone to essential education services." The report, prepared for the American Tort Reform Association, noted, "Especially in the big-ticket lawsuits, settlement amounts are often overshadowed by attorney costs."

But according to Shinoff and other defense lawyers, most of the time districts try to settle cases up front. "I haven't seen school districts try to make any 'statement' to the plaintiffs' bar," says Jeff C. Marderosian, a general counsel for school districts who has represented Burbank Unified in the past. If a JPA thinks a district should settle a case, he adds, "they're going to throw the gauntlet down and say, 'We're done.' "

Shinoff insists "there's really no upside" for a district to put up a protracted legal fight. "Attorney fees ... are something that every defendant is very cognizant of. They're not going to fight unless they have a very good case."

He adds, "My experience with board members is, they take the issues very seriously. They're doing their best to make sure employees are working in an environment that is free from harassment and discrimination."

In the *Baez* matter, the defense contract went to Nancy Doumanian. A graduate of the Southwestern University School of Law, she was admitted to the Bar in 1993 and practiced with Carpenter & Rothans in Los Angeles, where her municipal clients included the cities of Gardena and Glendora, and the Inglewood Unified School District. By 2000 she had opened her own shop, Doumanian & Associates. Among the school districts she has represented are Lancaster, Sulphur Springs, and Glendale Unified.

Defense attorney Marderosian worked with Doumanian on several cases. "I have always found her to be very competent, extremely competent. ... I've found her to be very, very thorough," he says.

"Unfortunately, we're going to have to lose the trial, then we're going to have to win the appeal, and then we're going to have win the next trial," attorney Victor L. George (right) recalls telling Wayne C. Smith, co-counsel for Danielle Baez. (Vern Evans)

Baez's attorneys George and Smith believe that Burbank Unified and its lawyers decided to take a no-holds-barred approach to the case even before the suit was filed, citing as evidence Superintendent Bowman's May 2007 letter to their client. "Certainly, they were giving her misinformation," George says.

The litigation soon became mired in heated discovery disputes. "Your office is claiming a privilege on emails our client provided your investigator [Sandhu] during the investigation!" Smith wrote Doumanian in March 2008. The defense also asserted attorney-client privilege and the work-product doctrine as grounds for refusing to turn over the file from Sandhu's investigation. After oral argument, the trial court denied Baez's motion to compel production.

"It's, 'Hey, you owe me this,' and you get 'No,' " Smith says. "That response forces us to go into court to get the relief that we're entitled to get," Smith says. And those delays were costly.

From the outset, Doumanian rested her defense on the theory that Baez concocted allegations against Jellison to cover up her affair with Bradley. "The plaintiff's intimate relationship with Mr. Bradley permeates the heart of both liability and damages in this case," Doumanian claimed in an August 2008 filing. Seeking support, she moved to compel the deposition of Baez's husband, subpoenaed a plastic surgeon whom Baez had consulted, and

attempted to paint the plaintiff in the most lurid of colors. "Plaintiff was literally caught with her pants down during one of her sexual trysts with Bradley at the School District's offices," she wrote in a brief.

California Evidence Code Section 1106, however, provides that "evidence of specific instances of plaintiff's sexual conduct ... is not admissible by the defendant in order to prove consent by the plaintiff or the absence of injury to the plaintiff." Nevertheless, according to Baez's attorneys, Doumanian was relentless in bringing up Baez's alleged infidelity. "It doesn't matter what the [legal] issue was ... Nancy always started off every introduction with this sordid rendition of facts about the alleged affair," Smith recalls. "It was a constant barrage about this marital infidelity issue."

In December 2008 the defense suffered a setback when the Second District Court of Appeal ordered production of the Sandhu investigative file, holding that disclosure was essential for fair adjudication of the action. (*Baez v. Superior Court*, 2008 WL 5394067 (Cal. Ct. App.).)

In a footnote, the panel said the school district had "inappropriately" opened its response to the plaintiff's petition for a writ of mandate with "unsupported allegations regarding Baez and further devotes several additional pages to purported quotations from 'salacious' emails it says Baez and Bradley exchanged."

Doumanian, in fact, had begun the brief by writing, " 'Caught with her pants down. ...' This is literally how the petitioner's torrid love affair with her supervisor, Steve Bradley, was discovered by a night custodian at the school district's offices."

By the time Smith actually received the investigative file, he had only a few weeks to complete discovery. On the first day of trial Judge Joanne B. O'Donnell handed Doumanian a huge victory, ruling that Burbank Unified was entitled to introduce evidence of the Bradley affair to show that Baez "may have manufactured the claim of Jellison's sexual assault to deflect attention from the District's investigation of her conduct with Bradley." The judge also denied Baez's motion to exclude testimony about a miscarriage she had suffered; the defense insinuated that the pregnancy resulted from her relationship with Bradley.

As soon as O'Donnell announced that ruling, George turned to Smith at the counsel table and told him, "Unfortunately, we're going to have to lose the trial, then we're going to have to win the appeal, and then we're going to have to win the next trial."

"[The district is] perfectly entitled to litigate that way. But when they do and they lose, they are going to have to pay for the plaintiff's firm. "

---JUDGE MARY ANN MURPHY

In July 2009, the jury indeed returned a verdict in favor of the district. Doumanian had prepared the way from her opening statement, describing emails that Baez and Bradley had exchanged as "dirty" and "filthy." According to one juror's posttrial declaration, 35 to 40 percent of the jury's deliberations was devoted to the Baez-Bradley affair, including speculation about who was the father of her miscarried fetus. The juror said other members of the panel commented to the effect of "[S]he slept with her own boss, c'mon ... how can you believe her?"

Baez appealed in October 2009, adding appellate specialist Norman Pine of Sherman Oaks's Pine & Pine to her legal team. The appellants argued that the trial court's admission of Baez's sexual conduct with anyone other than Jellison was plain legal error.

Two-and-a-half years elapsed before the Second District unanimously reversed the defense judgment and ordered a new trial. The court ruled that evidence on the Baez-Bradley affair could not be admitted either to undercut causation of damages, or to attack the plaintiff's credibility. "[T]he question of whether Jellison sexually assaulted Baez on July 26, 2006, was lost in a trial focused on Baez's relationship with Bradley," wrote Justice Norvell "Fred" Woods. He added, "[t]he suggestion that Baez fabricated the allegation against Jellison" to deflect attention away from the investigation of her relationship with Bradley was "particularly tenuous." (*Baez v. Burbank Unified Sch. Dist.*, 2012 WL 1571517 (Cal. Ct. App. (unpub.)).)

With its defense theory essentially gutted, Burbank Unified might have considered settlement. Over the course of the litigation, in fact, the parties participated in two full-day sessions with mediators and in five mandatory settlement conferences with a judge. But none of those efforts proved fruitful. At the Burbank Unified board meeting in August 2014, Larry Applebaum made an oblique reference to why the case persisted. "When [a settlement] demand is beyond outrageous, you have to do something to protect the taxpayers' dollars," he said.

Defense attorney George won't discuss specifics of settlement negotiations, but he says that if he had made a specific demand, "The expectation would be the other side would make some good faith [counteroffer]. ... If that doesn't take place, what are you going to do?"

The district's resistance may also reflect an understandable reluctance to admit liability in a case implicating its top personnel. Baez's accusation that Jellison had sexually assaulted her, says George, was "a very bad allegation toward a high-ranking member of upper management of the district."

For a school district, adds defense attorney Shinoff, "There's reputational injury to consider with this sort of case." Individual officials accused of wrongdoing, he says, may "feel equally offended."

Plaintiffs attorneys contend some school districts have been known to sanction excessive, no-holds-barred litigation even when their liability is clear. When Becky Romano, a high school assistant principal, claimed she was forced out of her job after suffering a work-related injury, Allen R. Ball of Ball & Yorke in Ventura filed what he thought was a routine wrongful termination lawsuit. (*Romano v. Oxnard Union High Sch. Dist.*, No. CIV238657 (Ventura Super. Ct., filed Jan. 19, 2006).)

"There was never any real question there was going to be a verdict on behalf of Ms. Romano," Ball asserts. He says he made an initial offer to settle the case for $75,000. But the Oxnard Union High School District fought him to the "nth degree," he says, filing a blizzard of discovery motions. After two years of litigation and with a trial looming, the district settled the claim for $150,000. The Ventura Star later discovered through a California Public Records Act request that defense counsel Dennis J. Walsh had billed the school district $532,123 in fees and costs.

"It's not an effective use of taxpayers' money when you spend $532,000 on a case that settled for $150,000," Ball says.

Manly cites one of his cases involving a girl with special needs who was molested by a school bus driver. Among other indications of liability against the Lodi Unified School District, he says, school officials had testified they knew the driver had a prior misdemeanor conviction for having sex with a prostitute. The district, however, contested the claim right through the liability phase of a jury trial. After losing that verdict, it settled for $4.75 million—one of the largest payouts of its kind in California. (*Diana C. v. Lodi Unified Sch. Dist.*, No. 39-2011-00267549 (San Joaquin Super. Ct. filed Aug. 4, 2011).)

The Baez retrial got under way in October 2013, with Judge Murphy presiding. But just a week later, on the fifth day of trial, she declared a mistrial due to defense misconduct. Murphy cited repeated references in Doumanian's opening statement to Baez being investigated for "serious misconduct" on the job, even though the Court of Appeal had ruled the Bradley affair off limits. Also, the jury was not supposed to know there had been a previous trial. But Doumanian brought into court a cart of white exhibit binders labeled "Trial Testimony," which she placed facing the jury.

"If I had a tape measure, I would say it was less than five feet from one end of the jury box," Murphy said. "It's about the integrity of the court's order. It's about the fact that counsel still doesn't think she has violated any of the orders in arguing this motion, and in fact, she and her witness have violated the order, first witness out of the box in this trial. This is unacceptable."

Murphy ordered jury selection for a third trial to begin the next day, denying Doumanian's request for a hiatus. The original duration was estimated at five days for the plaintiff's case and two days for the defense, but the trial dragged on for three weeks. "There was a constant request for sidebars, where Nancy would [claim], 'Your Honor, they've opened the door [to evidence about the Bradley affair], they've opened the door,' " Smith recalls. "Judge Murphy would say, 'They didn't, and that door will stay shut.' "

Finally, in November 2013, the jury found for Baez on the hostile-work-environment claim, awarding her $99,398 for past economic loss and $100,000 for physical pain and mental suffering. It also found that Jellison had not touched Baez with the intent to harm and offend her on July 26, 2006, but did cause her emotional distress.

The relatively low award appeared to vindicate the district's strategy, and it didn't give the plaintiffs lawyers much to celebrate. In contingency fees, George and Smith were looking at a meager return for thousands of hours of labor. But FEHA has that kicker: The statute allows the court, "in its discretion," to award "reasonable attorney's fees and costs" to the prevailing party. (Cal. Gov't Code § 12965(b).)

"I don't want the court to presume by my silence that I agree with any of the comments about misconduct or rule violation"

—NANCY P. DOUMANIAN, DEFENSE ATTORNEY

In their motion for fees, George and Smith calculated a lodestar figure of more than $1.6 million, based on 2,612 hours of work. That sum, they argued, should be enhanced by a multiplier of two to compensate them for the risk of taking the case. "Plaintiff managed to prevail in this action against both the large Burbank Unified School District and Ms. Doumanian," they said, comparing the case to a "David versus Goliath" struggle.

They attached to their motion a declaration from Nathan Goldberg, a partner at Allred, Maroko & Goldberg in Los Angeles who earlier had faced Doumanian in a hostile-work-environment case brought by his client, Elizabeth Pop, against her former supervisor at the Pasadena Area Community College District. Los Angeles County Superior Court Judge Rita Miller granted Pop a new trial, admonishing Doumanian for making misrepresentations of law and evidence during closing argument that resulted in "a miscarriage of justice." Among other things, Doumanian had told the jury, "You cannot even award [the plaintiffs] a dollar out of sympathy. ... If you award one dollar to the plaintiffs, they get to collect all of their attorney fees."

After Pop prevailed in the retrial, the court awarded Goldberg $950,000 in fees and costs. "Nancy Doumanian ... took a scorched-earth approach on behalf of her client and was unwilling to engage in any serious effort to resolve the case," he wrote in his Baez declaration, adding that his experience litigating against her was "terribly frustrating and disheartening."

Doumanian did not respond to several requests for an interview.

As the hearing on Baez's fees motion got under way in July 2014, Judge Murphy said, "Th[is] case has involved some of the most brutal, hard-fought litigation I have ever seen in any case, employment or otherwise. We have a public entity funded by taxpayer dollars, the taxpayers of the City of Burbank, and for whatever reason, the Burbank Unified School District has decided, an elected or appointed official, to retain Ms. Doumanian's law firm, and the litigation has been replete with rule violations necessitating extra time and work on the plaintiff's side, and certainly on the court's."

Doumanian's defense, Murphy observed, "was not always cricket." The judge elaborated: "Many aspects of the defense, particularly the rule violations and filing documents, voluminous documents on the day of the hearing and having the court ... put over and reconsider motions so it could consider late filed documents ..., drove up the cost of litigating the case on the plaintiff's side."

Then the judge added a personal note. "The one thing that struck me in the trial, that I remember to this day, is the superintendent of the Burbank Unified School District—I think she was a PhD—sitting next to Ms. Doumanian and they were both looking over at Ms. Baez laughing at her with a mocking manner, and I called that out. That is noted in the transcript. So this is coming from the top of the school district. They have seen how their litigation is being handled. Laughing at the plaintiff in a mocking way with the defense attorney."

Murphy concluded, "Except for the ethical issues and the rule violations, which I'm going to put over to one side, [the district is] perfectly entitled to litigate that way, perfectly entitled to. But when they do and they lose, they are going to have to pay for the plaintiff's firm that decides they are going to meet them every time ... and are not going to roll over."

Burbank Unified Superintendent Dr. Jan Britz, now retired, sat at the defense table during the second and third Baez trials. (Ross A. Benson)

With that she ordered Burbank Unified to pay George and Smith's firm $2,956,000 (it had agreed to take a 10 percent haircut on its original request), and to pay appellate attorney Pine another $260,604. Doumanian's assertion that the attorneys fees should be reduced because the defendant is a public entity, Murphy said, "is not well taken," noting that the district "has an unlimited war chest."

In perhaps her most pointed comments, Murphy speculated about the school board's motivation for its defense strategy. A "take-no-prisoners approach," she said, might make it hard for plaintiffs to "attempt to vindicate rights and possibly hav[e] a chilling effect on any employees that wanted to sue the district. You know, 'We will make you litigate for seven years. We will fight you on the land, on the sea, and in the air.' "

For her part, Doumanian was uncharacteristically subdued at the hearing. "I don't want the court to presume by my silence that I agree with any of the comments about misconduct or rule violation," she said at the hearing. "The record speaks for itself."

She denied expressing any disrespect toward the plaintiff in the courtroom. "I dispute your commenting that Dr. Britz, an educator, was laughing at Ms. Baez, because she wasn't," Doumanian told Judge Murphy.

And she added, "Sure, I can concede some of my pleadings didn't have tabs and page lines. But I hope the justice is about justice and not about complying with what the Court of Appeal has noted is hypertechnicalities.

Then Doumanian said, without irony, "I don't believe there was anything difficult or complicated about this case, and your reference to my putting on an aggressive defense, I had no problems with Judge O'Donnell in the first trial. ... It was a different experience in the retrial before Your Honor, but nothing about that experience makes it a complex or difficult case ... so I don't think the application of a [fee] multiplier is at all appropriate."

About a month later at the school board meeting, Applebaum made his comment about the district not wanting to make "this" a "regular thing." He told the *Burbank Leader* that the board appealed the case to protect taxpayers. "This board has not lost our mind, and we have in fact exercised common sense and prudence," he said. Because the decision had to be made behind closed doors, Applebaum added, "the community has to either trust the people they elect ... or vote us out."

While his candor was unusual, plaintiffs lawyers contend the district's attitude isn't a surprise. "The biggest problem with school district litigation is, there is no ombudsman ... no person close to the case who can keep an eye on how the defendant is spending taxpayers' money," Allen Ball argues. Board members, he stresses, "make decisions based on recommendations of risk management and the defense attorney ... The risk manager doesn't want to admit any wrongdoing."

At the end of the day, Manly adds, a protracted defense strategy "hasn't proven to be effective. Quite the contrary—a lot of these cases could have been settled for far less money early on if they'd just been reasonable."

Burbank Unified, meanwhile, continues to invest in the *Baez* case. The appellant's opening brief by Doumanian and attorneys at Greines Martin includes arguments that evidence of Baez's marital problems—including her divorce petition—could have been admitted on the issue of damages without referencing her affair with Bradley. And it contends the trial court committed fundamental error by admitting into evidence—and permitting plaintiff's counsel to read aloud to the jury—investigator Sandhu's conclusion that she believed "the conduct that took place in the room more closely comports with Ms. Baez's version of the events than Mr. Jellison."

The tone of the brief, though, is relatively dry: Evidence of the plaintiff's marital difficulties, the appellate attorneys state, "was obviously highly probative and directly relevant to one of the central issues in the case—the impact of Jellison's conduct on her emotional state." There are no rhetorical flourishes. And no mention of anyone being caught with their pants down.

A version of this article appears in the October 2015 print issue of California Lawyer *as "Think Twice Before Suing This School District."*

Matthew Heller is a Los Angeles-based freelance writer.

On the Record.

Public Information in North Texas

Lawyer fees add up in records cases

Some agencies pay thousands to handle information requests

Published on January 23, 2014

By **Allison Wisk (mailto:awisk@dallasnews.com)** | Staff Writer

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Government entities without in-house counsel must hire private attorneys to handle legal matters, including some requests for public information.

Many agencies respond to open records inquiries without paying an attorney to do it for them, seeking legal guidance only when necessary.

But documents received by *The Dallas Morning News* reveal that several North Texas agencies pay thousands of dollars to outside counsel to handle public information requests with regularity.

In response to open records requests sent by *The News*, several government agencies

EXHIBIT F

readily produced legal bills, while others sought rulings from the attorney general to prevent release of whole invoices showing public expenditures on such fees. Some attorneys were unable to specify how many hours billed were spent on public information queries.

Approximate fees paid to private firms to handle public information requests in 2013*

1	Addison	$46,129
2	McKinney	$44,877
3	Plano ISD	$43,006
4	Garland ISD	$33,039
5	Flower Mound	$26,824
6	Coppell ISD	$27,732
7	Anna	$20,042
8	Highland Village	$17,320
9	Murphy	$15,899
10	Fairview	$13,124

*Of those government agencies that responded

SOURCE: *Dallas Morning News* research

In 2013, McKinney paid approximately $44,877 to a private firm for 320 hours of work on public information requests. Flower Mound spent around $26,824.50 on 198 hours of work on open records. Anna, in Collin County, paid more than $20,000 to a private firm for 155 hours spent on matters involving the Public Information Act.

In Parker, a Collin County city of around 4,000 people, officials pay private attorney Jim Shepherd a monthly retainer fee. Because of that, Shepherd said, he couldn't easily determine how much time was spent handling open records requests. When asked by The News to disclose how much he is paid each month by the city, Shepherd would not comment, saying the figure would be "grossly misleading."

"If the goal here is to determine the city's expense on legal fees for public information requests, putting down my monthly retainer has almost nothing to do with that," he said.

Shepherd later provided *The News* with a calculation indicating he was paid an estimated $7,050 in 2013 for 35.25 hours spent on public information requests.

Going to the AG

Joseph Gorfida, a partner at Nichols, Jackson, Dillard, Hager and Smith, a Dallas firm that represents more than 20 cities, said city-paid private attorneys are typically asked to step in only when necessary: to seek an opinion from the attorney general.

"If it's something that, 'Wait a minute, we got an ongoing investigation; we're involved in litigation,' [or] one of the exceptions, then they'll reach out to the city attorney," Gorfida said.

Former Farmers Branch City Council member Carol Dingman said she sent several open records requests for the city's legal fees in the battle over its immigration ordinance, which barred landlords from renting to immigrants who were in the U.S. unlawfully. The city appealed a federal court's ruling that the ordinance was unconstitutional to the U.S. Supreme Court, which declined to hear the case.

Former Farmers Branch City Council member Carol Dingman

Former Farmers Branch council member Carol Dingman sued the city in 2008 after her open records requests for the city's legal fees in the battle over its immigration ordinance were repeatedly referred to the attorney general for a ruling.

After her requests were repeatedly referred to the attorney general for a ruling, Dingman sued the city in 2008.

"I don't want to say the city is bad in every case, but it is an example of what a city can do to impede the flow of information," she said.

Range of rulings

The News asked the attorney general's office for a list of ruling requests submitted in 2013 by each of the agencies included in its study. Among them, McKinney forwarded 324 requests to the attorney general, while Flower Mound sent 154. Anna, with a population of fewer than 10,000 people, submitted 48.

Gayle Thompson, records custodian for Carrollton-Farmers Branch ISD, said the district's attorneys are the first to look over all requests.

"Everything goes through an attorney, everything, any open record," she said. "So any open record we can legally give out, we give out all."

Number of ruling requests sent to Texas attorney general in 2013

1	Plano	923
2	Dallas	664
3	McKinney	324
4	Carrollton	302
5	Mesquite	301
6	Richardson	204
7	Garland	171
8	Flower Mound	154
9	Frisco	131
10	Dallas ISD	92

SOURCES: Texas attorney general's office; U.S. census

Bill Aleshire, a volunteer attorney for the Freedom of Information Foundation of Texas, said that's part of the problem.

"It not only causes delay in contradicting the command in the [Texas] Public Information Act that public information be disclosed promptly, but is adding greatly to the expense of the government unnecessarily," he said.

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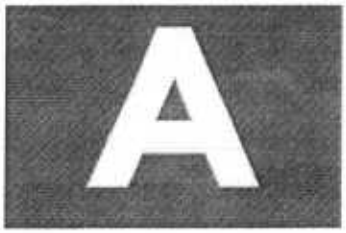

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On the record

Dallas Morning News study finds inconsistent handling of requests, systemic violations.

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CONTROVERSIES

Mediation Complete for San Diego Mayor Bob Filner, Details Still Confidential

Hundreds of citizens, the entire city council and prominent lawmakers from Congress have all called for Filner to resign. By Friday he may have answered that call

By Katy Steinmetz @katysteinmetz Aug. 22, 2013

Update, 12:45 p.m.: Local broadcast news outlets are reporting that Filner will indeed resign as part of the deal reached with lawyer Gloria Allred and city officials, if the council approves it in a vote tomorrow. On Wednesday evening, a city council staffer posted pictures of Filner loading boxes into his SUV on Twitter. Another report on Twitter confirmed sightings of Filner leaving the mayor's office with boxes in tow. The local ABC affiliate, citing unnamed sources, reported today that the woman who filed a sexual harassment lawsuit against Filner would get a six-figure settlement as part of the agreement.

REUTERS / REUTERS

A demonstrator holds up a sign to protest against San Diego Mayor Bob Filner's refusal to resign over multiple sexual harassment accusations, during a rally and march in downtown San Diego, California August 18, 2013.

San Diego Mayor Bob Filner, who has now been accused of inappropriate conduct by 18 women, spent Monday and Tuesday in mediation with city officials and his most prominent accuser's lawyer. On Wednesday, the city attorney's office announced news of an agreement, though the details won't be revealed until the city council votes on whether to accept that deal early Friday afternoon.

RELATED

Amid Recall Push, San Diego Mayor Bob Filner Negotiates Next Steps

San Diego Mayor Bob Filner Digs in as Sex Harassment Troubles Mount

The parties each had a big bargaining chip going into those talks: prominent women's right attorney Gloria Allred had her client's sexual harassment lawsuit against Filner and the city of San Diego; the city of San Diego had the ability to pay Filner's legal fees, which the city attorney has balked at; and Filner arguably had the best leverage of all: power over his resignation. A city council staffer tells TIME that all parties present had signed confidentiality agreements and that any settlement involving the lawsuit against the city would require a council vote. Emergency sessions of the council require 24 hours notice; hence, the world must wait another day to find out if the first-term Democrat will finally heed calls to step down.

Coming to an agreement through mediation was the simplest solution for everyone, though it wasn't the only one being floated by Filner's opposers. Citizens of San Diego have organized volunteers to circulate recall petitions, gearing up for a potentially messy election. City officials have also been considering an obscure part of the city code, which would allow them to chuck the mayor out of office if they could find him guilty of misusing city funds. The latter options both had the potential to get stuck in court, held up on appeals or challenges, drawing out San Diego's humiliation for many more months.

It's likely that Filner's exit is part of the deal. Allred, who represents Filner's former communications director, has demanded his resignation in press conferences–and is set to appear later today in Los Angeles with Filner's former fiancee, Bronwyn Ingram. Ingram, who has also called on the 70-year-old to leave his post, dumped the mayor in a public letter the day before allegations first surfaced in July.

Filner has admitted to bad behavior, though he hasn't responded to the many specific allegations leveled at him. He also took a hiatus from office to complete intensive behavioral therapy, seemingly hoping that this would be enough to appease the people of the nation's eighth largest city. If a recall effort with 800 quick volunteers is any indication, that didn't work. But his critics may finally get the white flag they've been waiting for before hitting the beach this weekend.

EXHIBIT G