

1 CLAUDIA G. SILVA, County Counsel
By: AUSTIN M. UHLER, Senior Deputy (SBN 319684)
2 Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
3 San Diego, California 92101-2469
Telephone: (619) 318-7865 Fax: (619) 531-6005
4 E-mail: austin.uhler@sdcounty.ca.gov

5 Attorneys for Defendants Migell Acosta, Ebony Shelton, San Diego County Library,
Board of Supervisors of County of San Diego, and County of San Diego
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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 ANNETTE HUBBELL and ANNETTE
HUBBELL PRODUCTIONS,

12 Plaintiffs,

13 v.

14 MIGELL ACOSTA, in his personal and
15 official capacity as Director of the San
Diego County Library; EBONY
16 SHELTON, in her official capacity as
Chief Administrative Officer of San Diego
17 County; SAN DIEGO COUNTY
LIBRARY; SAN DIEGO COUNTY
18 BOARD OF SUPERVISORS; and the
COUNTY OF SAN DIEGO,

19 Defendants.
20
21

No. 25-cv-01105-JAH-SBC

**NOTICE OF MOTION AND MOTION
TO DISMISS PLAINTIFFS'
COMPLAINT**

Date: July 16, 2025
Time: 2:30 p.m.
Courtroom: 13B
District Judge: Hon. John A. Houston
Magistrate Judge: Hon. Steve B. Chu

NOTICE OF MOTION AND MOTION

TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on July 16, 2025, at 2:30 p.m. or as soon thereafter as counsel may be heard in Courtroom 13B of the above-entitled Court, located at 333 West Broadway, San Diego, California, and before the Honorable John A. Houston, Defendants Migell Acosta, Ebony Shelton, San Diego County Library, Board of Supervisors of the County of San Diego, and the County of San Diego (“Defendants”) will and hereby do move under Federal Rule of Civil Procedure 12(b)(6) for an order dismissing both the Complaint filed by Plaintiffs Annette Hubbell and Annette Hubbell Productions and this entire action with prejudice.

The motion is made on the grounds that Plaintiffs’ claims, as a matter of law, cannot be maintained against Defendants due to Defendants’ speech rights.

The motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of Austin M. Uhler and the Exhibit attached thereto, the complete files and record of this action, and such other matters as may be presented to the Court before or at the hearing.

DATED: May 28, 2025

CLAUDIA G. SILVA, County Counsel

By: *s/ Austin M. Uhler*
AUSTIN M. UHLER, Senior Deputy
Attorneys for Defendants Migell Acosta,
Ebony Shelton, San Diego County Library,
Board of Supervisors of County of San
Diego, and County of San Diego

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18 BOARD OF SUPERVISORS; and the
COUNTY OF SAN DIEGO,

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No. 25-cv-01105-JAH-SBC

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS**

Date: July 16, 2025
Time: 2:30 p.m.
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1 **I. INTRODUCTION**

2 In the Complaint, Plaintiff Annette Hubbell emphasizes her belief that storytelling
3 must be done without regard for the race of the storyteller or for the race of the figures
4 the storyteller portrays. Whether this belief is true or false, good or bad, and noble or
5 naïve are important questions for storytellers as our culture continues to evolve in its
6 views on the purposes of art, the implications of race, and the lessons of each for the
7 other. But the question presented by the Complaint is not any of those questions. Rather,
8 it is whether Plaintiff can, by invoking anti-discrimination laws, require the San Diego
9 County Library to be colorblind in deciding *whether she was the right person to perform*
10 *and tell the story that the Library wanted its customers to receive.*

11 Courts that have faced this kind of question in the context of theater, pageant, or
12 television production have uniformly concluded that performers cannot wield anti-
13 discrimination laws to require colorblindness in casting or storytelling decisions, because
14 such a requirement would inescapably infringe on the producers' speech rights to tell the
15 story that they want to tell and, with equal force, *not to tell a story that they do not want*
16 *to tell.* Plaintiffs allege that the Library exercised storytelling discretion in the inherently
17 expressive context of live dramatic performance when it decided that Plaintiff Hubbell, a
18 white woman, no matter how skilled and accomplished, was simply not the person it
19 wanted to speak the words of and perform from the life of famous Black women like
20 Mary McLeod Bethune or Harriet Tubman for the education and entertainment of its
21 customers. The Library's speech right to make this kind of casting and storytelling
22 decision is fundamental to its purpose in the community, and there is no good reason to
23 accord it any less legal protection than is accorded to private arts producers.

24 **II. SUMMARY OF PLAINTIFFS' ALLEGATIONS**

25 Plaintiffs Annette Hubbell and Annette Hubbell Productions allege that Defendant
26 San Diego County Library and four other Defendants affiliated with it unlawfully racially
27 discriminated against them by cancelling Plaintiffs' entertainment performance originally

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1 scheduled pursuant to a contract between the County and Plaintiff Annette Hubbell
2 Productions because Plaintiff Hubbell is white. Plaintiffs’ specific factual allegations are:
3 Plaintiff Hubbell is “an author, actress, and historian.” Dkt. 1, Complaint ¶ 21.
4 Plaintiff Annette Hubbell Productions is a sole proprietorship formed by Plaintiff Hubbell
5 to “provid[e] education and entertainment services” and “showcase historical characters
6 through theatrical performances.” *Id.* ¶¶ 15, 22.

7 Plaintiff Hubbell has met with artistic success, having written and performed a
8 one-woman play “bring[ing] to life the extraordinary stories of ordinary women who
9 transformed themselves and left the world a better place.” *Id.* ¶ 25. The women Plaintiff
10 Hubbell portrays in the play include Harriet Beecher Stowe, Mary McLeod Bethune,
11 Harriet Tubman, Corrie ten Boom, and Amy Carmichael. *See id.*

12 In May 2023, Plaintiff Hubbell signed a contract with the County of San Diego to
13 perform as needed at any of the County Library’s branch locations. *See id.* ¶ 27; *see also*
14 Uhler Decl. Ex. 1, County Contract Number 569178, Agreement with Annette Hubbell
15 Productions [for] As Needed Educational Instructors & Entertainers (the “Contract”). The
16 Contract provides,

17 County and Contractor agree that the County shall not control or
18 direct Contractor’s performance of the services under this contract, that
19 Contractor performs work outside the usual course of the County’s business
20 and that the Contractor is customarily engaged in an independently
established trade, occupation or business of the same nature as that involved
in the work performed.

21 Uhler Decl. Ex. 1, Contract § 5.¹

22 In December 2023, Rancho Santa Fe Branch Manager Christina Patterson emailed
23 Plaintiff Hubbell to inquire whether Plaintiff Hubbell would be available to perform at
24 one of the branch’s Coffee and Conversation programs for Women’s History Month in
25 March 2024. *See* Dkt. 1-2, Complaint Ex. A at 10. Plaintiff Hubbell replied that she

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¹ “A court may consider evidence on which the complaint necessarily relies if: (1) the complaint refers to the document; (2) the document is central to the plaintiff’s claim; and (3) no party questions the authenticity of the copy attached to the 12(b)(6) motion.” *Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998 (9th Cir. 2010).

1 would be available and suggested, given the 1-hour length of the program, that Ms.
2 Patterson choose three of a total of eight possible characters for Plaintiff Hubbell to
3 perform. *See id.* Plaintiff Hubbell offered to discuss the choice further with Ms.
4 Patterson. *See id.* (“We can talk about which characters you’d want; feel free to call
5 me.”). The same day, Ms. Patterson replied back, choosing Harriet Beecher Stowe, who
6 was white; Mary McLeod Bethune, who was Black; and Harriet Tubman, who was also
7 Black. *See id.* at 9. They emailed further to discuss a flyer for the event, payment details,
8 expected attendance, the sound system, the use of props, and other details. *See id.* at 5-9.

9 On March 6, 2024, Ms. Patterson replied to the email thread to ask if Plaintiff
10 Hubbell could change two of her characters, stating, “our administration was
11 uncomfortable with you performing a black character as a white woman.” *Id.* at 4.
12 Plaintiff Hubbell did not agree to change two of the characters, but offered to replace
13 Mary McLeod Bethune, who was Black, with Corrie ten Boom, who was white (which
14 would have resulted in her portraying one Black woman out of three, down from the
15 originally planned two Black women out of three). *See id.* Ms. Patterson stated that she
16 had forwarded Plaintiff Hubbell’s response to her boss but would have to respect her
17 boss’s “decision” and “wishes.” *Id.* at 3. Plaintiff Hubbell then spoke over the phone with
18 the supervisor of the Rancho Santa Fe branch, Rebecca Lynn, who confirmed that the
19 Library did not want Plaintiff Hubbell, who is white, to perform as a woman who was
20 Black. *See* Dkt. 1, Complaint ¶ 30.

21 On March 8, 2024, Plaintiff Hubbell replied to the email thread to ask Ms.
22 Patterson for a decision, stating, “[i]f the condition remains, then I must decline the
23 invitation to perform and step aside.” *See* Dkt. 1-2, Complaint Ex. A at 3. Later that day,
24 Ms. Patterson responded, “I regret to inform you that we will have to cancel your
25 performance here at the library.” *Id.* at 2.

26 Plaintiff Hubbell later reported the incident to her County Supervisor, which
27 spurred an inquiry and response from the Library. *See* Dkt. 1, Complaint ¶ 30. The
28 Library’s Director, Defendant Migell Acosta, stated in a letter that the decision to ask

1 Plaintiff Hubbell to substitute character performances was discussed with the County’s
2 “executive administration” and “Diversity and Inclusion team.” *Id.* ¶ 35; *see also* Dkt. 1-
3 2, Complaint Ex. B at 12 (the letter). Defendant Acosta expressed the Library’s
4 conclusion that racial discrimination had not occurred. Dkt. 1-2, Complaint Ex. B at 12.

5 As a result of the Library’s cancelling the performance, Plaintiff Hubbell felt
6 “embarrassed, humiliated, and distressed.” Dkt. 1, Complaint ¶ 36. An educational
7 program that had initially agreed to have her perform her one-woman play “limited its
8 contact with her.” *Id.* ¶ 37. And she is concerned about what the cancellation “might
9 imply to audiences and hosts of other venues.” *Id.* ¶ 38.

10 **III. LEGAL STANDARD**

11 Under Federal Rule of Civil Procedure 12(b)(6), a complaint should be dismissed
12 if it fails to state a claim upon which relief can be granted. “To survive a motion to
13 dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a
14 claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)
15 (internal quotation marks and citation omitted). “A claim has facial plausibility when the
16 plaintiff pleads factual content that allows the court to draw the reasonable inference that
17 the defendant is liable for the misconduct alleged.” *Id.* Evaluating “whether a complaint
18 states a plausible claim for relief” is “a context-specific task that requires the reviewing
19 court to draw on its judicial experience and common sense.” *Id.* at 679.

20 Affirmative defenses “may be considered properly on a motion to dismiss where
21 the ‘allegations in the complaint suffice to establish’ the defense.” *Sams v. Yahoo! Inc.*,
22 713 F.3d 1175, 1179 (9th Cir. 2013) (quoting *Jones v. Bock*, 549 U.S. 199, 215 (2007)).
23 Indeed, they “routinely serve as a basis for granting Rule 12(b)(6) motions where the
24 defense is apparent from the face of the [c]omplaint.” *Id.* (alteration in original) (quoting
25 *Goddard v. Google Inc.*, 640 F. Supp. 2d 1193, 1199 n.5 (N.D. Cal. 2009)).

26 **IV. ARGUMENT**

27 All four of Plaintiffs’ claims for relief are based on alleged racial discrimination.
28 All four claims fail as a matter of law. The claims are unenforceable given that the

1 Library and other County-affiliated Defendants have speech rights to control the
2 storytelling and casting decisions in the context of the inherently expressive
3 performances they offer to Library customers.

4 **A. Government Entities Enjoy Speech Rights.**

5 “A government entity has the right to ‘speak for itself.’” *Pleasant Grove City, Utah*
6 *v. Summum*, 555 U.S. 460, 467 (2009) (quoting *Bd. of Regents of Univ. of Wis. System v.*
7 *Southworth*, 529 U.S. 217, 229 (2000)). It is “entitled to say what it wishes and to select
8 the views that it wants to express.” *Id.* at 467-68 (citations omitted). “Indeed, it is not
9 easy to imagine how government could function if it lacked this freedom.” *Id.* at 468.

10 In *Summum*, the issue was whether the First Amendment required a city to accept a
11 privately donated, permanent monument for installation in a public park from one donor
12 after it had accepted a privately donated, permanent monument for installation in the park
13 from another donor. *See id.* at 467. The plaintiff argued that the city could not display one
14 monument and refuse to display the other without satisfying strict scrutiny, arguing, in
15 essence, that the city’s refusal to install its monument was a type of censorship of its
16 speech in a public forum. *See id.* at 466. The Supreme Court reversed, declined to treat
17 the city’s conduct as censorship, and held that the entire enterprise of displaying some
18 privately donated monuments and not others was government speech. *See id.* at 472-73.
19 When the government speaks, the Court explained, it may exercise the “freedom to
20 express its views.” *Id.* at 468.

21 Government speech rights have been recognized in several contexts. In the public-
22 university context, the Supreme Court has recognized that, “[w]hen the University
23 determines the content of the education it provides,” for example, “we have permitted” it
24 “to regulate the content of what is or is not expressed when it is the speaker *or when it*
25 *enlists private entities to convey its own message.*” *Rosenberger v. Rector & Visitors of*
26 *Univ. of Virginia*, 515 U.S. 819, 833 (1995) (emphasis added). In the context of federal
27 grants to convey a message encouraging family planning, the government could prohibit
28 grantees from giving women abortion-related advice “to ensure that its message [in favor

1 of family planning] is neither garbled nor distorted by the grantee.” *Id.* (citing *Rust v.*
2 *Sullivan*, 500 U.S. 173, 196-200 (1991)).

3 The California Supreme Court has described the principles supporting the
4 government’s right to speak and engage in “purposive messaging”:

5 Participation by the government in the system of freedom of
6 expression is an essential feature of any democratic society. It enables the
7 government to inform, explain, and persuade—measures especially crucial
8 in a society that attempts to govern itself with a minimum use of force. . . .
9 And when it speaks, the government inevitably will express viewpoints that
10 some members of the body politic not only disagree with, but indeed find
11 highly objectionable. This purposive messaging represents an integral and,
12 on the whole, beneficial part of the government’s basic functioning.

13 *Delano Farms Co. v. Cal. Table Grape Comm’n*, 4 Cal. 5th 1204, 1222 (2018) (citation
14 and quotation marks omitted) (formatting altered).

15 **B. The Planned Performance Was an Inherently Expressive Activity**
16 **Protected by Defendants’ Speech Rights.**

17 The protected speech rights of private speakers extend “beyond written or spoken
18 words as mediums of expression.” *Green v. Miss USA, LLC*, 52 F.4th 773, 780 (9th Cir.
19 2022) (quoting *Hurley v. Irish-American Gay, Lesbian, and Bisexual Group of Boston*,
20 515 U.S. 557, 569 (1995)); *see, e.g., 303 Creative LLC v. Elenis*, 600 U.S. 570 (2023)
21 (design of wedding websites); *Masterpiece Cakeshop v. Colo. Civil Rights Comm’n*, 584
22 U.S. 617, 621 (2018) (design of wedding cakes). They “extend to theatrical productions”
23 *Green*, 52 F.4th at 780 (citing *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 558 (1975)).
24 And they extend, in many cases, to the right of producers to make the “expressive
25 decision” to cast or not to cast particular kinds of actors or contestants. *Id.* at 781.

26 In *Green*, the plaintiff, a transgender female, had argued that an Oregon anti-
27 discrimination law required the national Miss USA beauty pageant to allow her to
28 compete despite the pageant’s “natural born female” rule. *Id.* at 778. The Ninth Circuit
rejected the argument, holding that application of Oregon’s law would violate the
pageant’s free-speech rights to produce an expressive event to communicate a message of
encouraging and empowering women who were born female. *See id.* at 780-92.

1 In determining that the pageant was an “expressive production[.]” whose message
2 could “not be divorced from [its] selection and evaluation of contestants” (id. at 780, 781)
3 the court presented an extended discussion of race-conscious casting in the Broadway
4 musical *Hamilton*. See id. at 781-82. It described the musical’s “decision to cast the
5 predominantly white Founding Fathers with actors of color” as an “expressive decision”
6 that “was central to the message of the musical itself.” Id. at 781. The court even quoted
7 the musical’s creator, Lin-Manuel Miranda, as to why the casting decisions were integral
8 to the story:

9 Our goal was: This is a story about America then, told by America now, and
10 we want to eliminate any distance—our story should look the way our
11 country looks. Then we found the best people to embody these parts. *I think
it’s a very powerful statement without having to be a statement.*

12 Id. (emphasis added by the court) (quoting Rob Winert-Kendt, *Rapping a Revolution*,
13 N.Y. Times (Feb. 5, 2015), [https://www.nytimes.com/2015/02/08/theater/lin-manuel-
14 miranda-and-others-from-hamilton-talk-history.html](https://www.nytimes.com/2015/02/08/theater/lin-manuel-miranda-and-others-from-hamilton-talk-history.html)). The court reasoned that
15 “*Hamilton*’s expressive message was inescapably interwoven with its casting decisions.”
16 Id. at 782. “Had some anti-discrimination statute been applied to *Hamilton* forcibly to
17 include white actors,” the court considered, “the show simply would not be able to
18 express the message it desired.” Id. But, the court concluded, “such a use of the State’s
19 power would violate ‘the fundamental rule of protection under the First Amendment, that
20 a speaker has the autonomy to choose the content of his own message.’” Id. (quoting
21 *Hurley*, 515 U.S. at 569).

22 Indeed, a federal district court recently dismissed a Broadway actor’s race-
23 discrimination claims with prejudice based on the production company’s speech-rights
24 defense. See *Moore v. Hadestown Broadway LLC*, 722 F. Supp. 3d 229 (S.D.N.Y. 2024)
25 (Preska, J.). The court held that “enforcing Plaintiff’s . . . claims for racial discrimination
26 would abridge Defendant’s right to free speech . . . [and its] creative decisions about what
27 story to tell.” Id. at 259. In that case, the plaintiff alleged that the production company
28 fired her from her role as an actor in the musical *Hadestown* because she was Black. See

1 *id.* at 241-42. The court found that the plaintiff’s allegations stated a claim for racial
2 discrimination in violation of several sources of law, including 42 U.S.C. section 1981,
3 which protects the right to be free from racial discrimination in contracting. *See id.* at
4 249-52. However, the court noted that the plaintiff’s allegations and other evidence
5 appropriate to consider on a motion to dismiss showed that the production company fired
6 her because it wanted to avoid inadvertently telling a “white savior story.” *Id.* at 258. The
7 court noted that the company had realized that the “white savior story” might have been
8 inadvertently communicated after certain performances had arranged actors on the stage
9 such that one of the lead characters, Orpheus, who was played by a white actor, could be
10 perceived “as a white savior” in relation to a group of secondary characters, who were all
11 played by Black actors. *Id.* at 241. The court noted that the company “sought to change
12 those casting arrangements,” replacing the plaintiff with a white actor, “to change the
13 unintended expression.” *Id.* at 258. The court held that “the decisions Hadestown makes
14 about whom to cast for which roles—its employment decisions—are inherently
15 expressive because they are tied to the story it intends to tell and its creative expression.”
16 *Id.* at 260. And it concluded that enforcing the plaintiff’s discrimination claims would
17 impermissibly “compel[] a theater company to stage a performance in a manner that
18 expresses a story the theater company does not wish to tell.” *Id.* at 261; *see also*
19 *Claybrooks v. American Broadcasting Companies, Inc.*, 898 F. Supp. 2d 986, 989-91
20 (M.D. Tenn. 2012) (dismissing race-discrimination claims brought by Black men alleging
21 they were racially discriminated against when they were not chosen to be lead actors on
22 the reality show “The Bachelor”; ABC had speech rights to craft the show’s message, and
23 casting decisions were part and parcel of that message).

24 Here, Plaintiffs allege several facts showing that the planned performance was
25 inherently expressive and protected by Defendants’ speech rights. First, Plaintiffs allege
26 that the performance was to be in an inherently expressive medium. Plaintiffs allege that
27 the performance was to include her rendition of three characters, together comprising a
28 kind of 45-minute abridged cut of Plaintiff Hubbell’s one-woman play. *See* Dkt. 1,

1 Complaint ¶ 28. A play, like other theatrical productions, is an inherently expressive
2 medium. *See Green*, 52 F.4th at 780; *Moore*, 722 F. Supp. 3d at 260.

3 Second, Plaintiffs allege facts showing that the Library was at all times in the
4 producer’s role of selecting the characters to be portrayed. Plaintiff Hubbell does not
5 allege originally determining herself which three characters she would perform; the email
6 conversation attached to the Complaint shows that Plaintiff Hubbell originally allowed
7 Rancho Santa Fe Branch Manager Christina Patterson to select the three characters by
8 email and offered to discuss the character selection by telephone if Ms. Patterson wanted
9 more information. *See Dkt. 1-2, Ex. A* at 9-10. Moreover, after Ms. Patterson informed
10 Plaintiff Hubbell of the Library’s request that she change characters to avoid portraying
11 Black women, Plaintiff Hubbell responded by asking if the Library would allow her to
12 replace one of the two Black woman (Mary McLeod Bethune) with a white woman
13 (Corrie ten Boom) but not the other Black woman (Harriet Tubman). *See id.* at 4.

14 Third, numerous other allegations and details suggest that the Library was
15 controlling the production of the event. Plaintiffs allege that the Library agreed to pay
16 \$280 to Plaintiff Hubbell to perform. *See Dkt. 1, Complaint ¶ 28.* Plaintiff Hubbell
17 offered to present only three characters to fit the 1-hour length of the Library’s Coffee
18 and Conversation program as opposed to requesting a longer timeslot; Plaintiff Hubbell’s
19 one-woman play is longer and includes nine women. *See id.* ¶ 25; *Dkt. 1-2, Ex. A* at 10.
20 Plaintiff Hubbell and Ms. Patterson arranged that the Library would provide a chair and
21 quilt for the performance. *See Dkt. 1-2, Ex. A* at 7-9. Ms. Patterson provided Library and
22 Library Guild logos for the event flyer. *See id.* at 7-8. And Ms. Patterson informed
23 Plaintiff Hubbell that the Library Guild would provide light refreshments at the event for
24 the Library’s customers. *See id.* at 9.

25 Fourth, the Contract between Defendant County and Plaintiff Annette Hubbell
26 Productions announces in its very title that Plaintiffs services would be “AS NEEDED.”
27 Uhler Decl. Ex. 1, Contract at 1. The Statement of Work attached to and incorporated
28 into the Contract provides that both the “Dates” and “Times of Services” were “To be

1 determined” and that the “Locations of Services” were also “To be determined.” *See id.*
2 (immediately following page 6 of 6). These specific features of the Contract and the
3 specific facts alleged and shown above about the course of performance under the
4 Contract control over the inconsistent general allegation that the “County agreed not to
5 control or direct Annette’s performance.” Dkt. 1, Complaint ¶ 27; *see Sprewell v. Golden*
6 *State Warriors*, 266 F.3d 979, 988 (9th Cir.) (“The court need not . . . accept as true
7 allegations that contradict matters properly subject to judicial notice or by exhibit.”), *as*
8 *amended*, 275 F.3d 1187 (9th Cir. 2001).

9 Finally, it is irrelevant that Defendants did not provide Plaintiff Hubbell any
10 detailed articulation of the particular message Defendants wished to avoid by asking
11 Plaintiff Hubbell to change characters; “the decision of a speaker ‘not to propound a
12 particular point of view’—regardless whether it is thoroughly reasoned, long-held, or
13 well-articulated—‘is presumed to lie beyond the government’s power to control.’” *Green*,
14 52 F.4th at 784 (quoting *Hurley*, 515 U.S. at 574).

15 **C. Dismissing This Case Would Vindicate a Narrow Yet Important Right**
16 **that Supports the Healthy Functioning of Our Communities.**

17 There is no good reason to accord Defendants in this case any less legal protection
18 than has been accorded to private arts producers. Here, Defendants claim only the very
19 limited speech right for the Library not to be required to put on an inherently expressive
20 dramatic performance in which a white woman would portray one or more Black women
21 to Library customers. In the scheme of things, this is not a very ambitious right to claim!
22 Defendants do not claim any broader right to break contracts with businesses owned by
23 white people (or by people of any race) or any broader right to physically close the
24 Library to white customers (or to customers of any race). Defendants claim only the right
25 not to express a particular unintended message that they do not wish to express that
26 would be “inescapably interwoven” into any performance in which a white woman would
27 speak in the first-person perspective as a Black woman. *Green*, 52 F.4th at 782.

28 ///

1 Dismissing this case based on these narrow speech rights would be a good thing.
2 The County Library, like any public library, plays a unique role as teacher and storyteller
3 in the community. In *United States v. American Library Association, Inc.*, 539 U.S. 194
4 (2003), the Supreme Court examined the roles and missions of public libraries in our
5 society. An opinion for a four-justice plurality stated that “[p]ublic libraries pursue the
6 worthy missions of facilitating learning and cultural enrichment.” *Id.* at 203 (opinion of
7 Rehnquist, C.J.). To fulfill these missions, the “libraries must have broad discretion to
8 decide what material to provide to their patrons.” *Id.* at 204 (referring to books and other
9 materials provided for library customers’ use). Accordingly, the plurality concluded, it
10 could not apply “heightened judicial scrutiny” to the libraries’ decision there to provide
11 Internet access to their patrons using software to filter out pornographic websites,
12 because such scrutiny would be “incompatible with the discretion that public libraries
13 must have to fulfill their traditional missions” *Id.* at 205.

14 The conclusion that public libraries must have discretion to decide what
15 information to provide to their customers was shared by a majority of the Court. *See id.* at
16 217 (Breyer, J., concurring in the judgment) (“To apply ‘strict scrutiny’ to the ‘selection’
17 of a library’s collection . . . would unreasonably interfere with the discretion necessary to
18 create, maintain, or select . . . all the information the library makes available.”). And one
19 dissenting opinion actually went further, stating not only that libraries must have
20 discretion to decide what information to provide to its customers, but also that libraries’
21 exercise of that discretion is itself entitled to First Amendment protection. *See id.* at 226
22 (Stevens, J., dissenting) (“Given our Nation’s deep commitment to safeguarding
23 academic freedom and to the robust exchange of ideas, a library’s exercise of judgment
24 with respect to its collection is entitled to First Amendment protection.”).²

25
26 ² It is not necessary to ground the government’s right to speak in the First
27 Amendment—it could also be grounded in structural or practical necessity—but some
28 courts have. *See, e.g., Nadel v. Regents of the Univ. of Cal.*, 28 Cal. App. 4th 1251, 1267
(1994) (extending First Amendment protections to U.C. Berkeley in its defense of a
defamation action) (“[O]ur best answer is that if the unfettered interchange of ideas is a
central concern of the First Amendment, then application of the First Amendment to
government speech in th[is] context . . . is entirely consistent with First Amendment

1 Coercing the Library’s speech through the application of anti-discrimination laws
2 to the inherently expressive Library production alleged in this case would inevitably
3 weaken the Library’s ability to function and pursue its missions. The Supreme Court
4 articulated the government’s simple need to function as a key reason to recognize
5 government speech rights in general, stating “it is not easy to imagine how government
6 could function if it lacked th[e] freedom” to “select the views that it wants to express.”
7 *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 467-68 (2009) (citations omitted).
8 This rationale is even stronger in the specific case of the County Library’s right to engage
9 in inherently expressive speech like Plaintiff Hubbell’s planned performance. If anti-
10 discrimination laws applied to such speech decisions, for example, it is hard to see how
11 libraries could choose *not* to produce what has been come to be known as Drag Queen
12 Story Hour events (in which drag queens read children’s books to young children at
13 public libraries) if proposed by a person with an as-needed-entertainer contract; saying no
14 to a Drag Queen Story Hour event while allowing other children’s book readings to go
15 forward would by all appearances deny that person’s contract benefits based on the
16 person’s gender expression. Further, any library’s desire to contract with performers to
17 put on something like the race-consciously casted musical *Hamilton* would be out of the
18 question. That outcome, and other things like it, would be a great loss.

19 **D. Leave to Amend Is Not Warranted.**

20 Plaintiffs’ allegations and the contract incorporated by reference into and integral
21 to the Complaint make it absolutely clear that any amendment would not cure the
22 deficiency raised above. While there are at least five factors to consider in exercising
23 discretion over whether to grant or deny leave to amend (*see Foman v. Davis*, 371 U.S.
24 178, 182 (1962)), one of those factors, futility of amendment, “can, by itself, justify the
25 denial of a motion for leave to amend.” *Kroessler v. CVS Health Corp.*, 977 F.3d 803,
26

27 dogma, in that it promotes government’s contribution to the marketplace of ideas.”). The
28 First Amendment does not expressly limit its protection to only certain speakers. And
local government entities are “persons” under other federal laws. *See, e.g., Monell v.
Dep’t of Soc. Servs.*, 436 U.S. 658 (1978).

1 815 (9th Cir. 2020) (citation omitted). Courts consider amendment futile if “no
2 amendment would allow the complaint to withstand dismissal as a matter of law.” *Id.*
3 Here, it is absolutely clear that Plaintiffs can add nothing to overcome the affirmative
4 defense of Defendants’ speech rights. Accordingly, the Court should dismiss the
5 Complaint without leave to amend.

6 **V. CONCLUSION**

7 For the reasons above, the Court should grant this motion, dismiss the Complaint
8 without leave to amend, and close this case. The act itself would be “a very powerful
9 statement without having to be a statement.” *Green v. Miss USA, LLC*, 52 F.4th 773, 780
10 (9th Cir. 2022) (emphasis removed) (citation omitted).

11
12 DATED: May 28, 2025

CLAUDIA G. SILVA, County Counsel

13 By: *s/ Austin M. Uhler*
14 AUSTIN M. UHLER, Senior Deputy
15 Attorneys for Defendants Migell Acosta,
16 Ebony Shelton, San Diego County Library,
17 Board of Supervisors of County of San
18 Diego, and County of San Diego
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1 CLAUDIA G. SILVA, County Counsel
By: AUSTIN M. UHLER, Senior Deputy (SBN 319684)
2 Office of County Counsel, County of San Diego
1600 Pacific Highway, Room 355
3 San Diego, California 92101-2469
Telephone: (619) 318-7865 Fax: (619) 531-6005
4 E-mail: austin.uhler@sdcounty.ca.gov

5 Attorneys for Defendants Migell Acosta, Ebony Shelton, San Diego County Library,
Board of Supervisors of County of San Diego, and County of San Diego
6
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

10
11 ANNETTE HUBBELL and ANNETTE
HUBBELL PRODUCTIONS,

12 Plaintiffs,

13 v.

14 MIGELL ACOSTA, in his personal and
15 official capacity as Director of the San
Diego County Library; EBONY
16 SHELTON, in her official capacity as
Chief Administrative Officer of San Diego
17 County; SAN DIEGO COUNTY
LIBRARY; SAN DIEGO COUNTY
18 BOARD OF SUPERVISORS; and the
COUNTY OF SAN DIEGO,

19 Defendants.
20
21

No. 25-cv-01105-JAH-SBC

**DECLARATION OF AUSTIN M.
UHLER IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

Date: July 16, 2025
Time: 2:30 p.m.
Courtroom: 13B
District Judge: Hon. John A. Houston
Magistrate Judge: Hon. Steve B. Chu

DECLARATION

I, Austin M. Uhler, declare:

1. I am an attorney licensed to practice law in the State of California and admitted to practice in this District Court. I am a Senior Deputy with the Office of County Counsel for the County of San Diego and represent all five Defendants in this action. I am familiar with the facts of this case and make this declaration based upon my own personal knowledge.

2. I have been assigned principal responsibility for gathering documents and other information from Defendants related to the claims in this case, analyzing Plaintiffs' claims, and selecting and advancing the best defenses available.

3. Attached as **Exhibit 1** to this declaration is a true and correct copy of the contract that Plaintiff Annette Hubbell Productions and Defendant County of San Diego made and entered into effective as of May 29, 2023. Despite diligent efforts to gather documents and other factual information related to this case, I have not found any other contract entered into between any Plaintiff and any Defendant.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 28, 2025.

s/Austin M. Uhler
AUSTIN M. UHLER

EXHIBIT 1

**COUNTY CONTRACT NUMBER 569178
 AGREEMENT WITH ANNETTE HUBBELL PRODUCTIONS
 AS NEEDED EDUCATIONAL INSTRUCTORS & ENTERTAINERS**

This agreement (“Agreement”) is made and entered into effective as of the date of the last signature on the signature page by and between the County of San Diego, a political subdivision of the State of California (“County”) and Annette Hubbell Productions, located at [REDACTED] (“Contractor”). For valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Agreement. The Agreement shall consist of this document, Exhibit A Statement of Work, Exhibit B Insurance Requirements, and Exhibit C Payment Schedule. In the event of a conflict between any provisions of this Agreement, the following order of precedence shall govern: First (1st) this document; Second (2nd) Exhibit B; Third (3rd) Exhibit A; and Fourth (4th) Exhibit C.
2. Term. The initial term of this Agreement shall begin the 26 of May, 2023 and end on May 31, 2027 (“Initial Term”).

Options to Extend for One to Six Additional Months at End of Agreement. County shall also have the option to extend the term of this Agreement, in one or more increments, for a total of no less than one (1) and no more than six (6) calendar months (“Incremental Options”). The County may exercise each Incremental Option by providing written notice to Contractor no fewer than fifteen (15) calendar days prior to expiration of this Agreement. The rates in effect at the time an Incremental Option is exercised shall apply during the term of the Incremental Option.

3. Standard of Performance. Contractor shall, in good and workmanlike manner and in accordance with the highest professional standards, at its own cost and expense, furnish all of the labor, technical, administrative, professional and all other personnel, all supplies and materials, equipment, printing, transportation, training, facilities, and all other means whatsoever, except as herein otherwise expressly specified to be furnished by County, necessary or proper to perform and complete the work and provide the services required of Contractor by this Agreement.
4. Payment. Pursuant to Exhibit C or other applicable pricing provisions of this Agreement, County agrees to pay a sum not to exceed \$10,000 for the entire term of this Agreement, in accordance with exhibit C Pricing schedule.

Payment terms are, unless otherwise specified by County, thirty (30) days from the later of: (i) performance of work under the Agreement entitling Contractor to payment, or (ii) County receipt of a correct and substantiated invoice. Payment shall be deemed to have been made on the date that County submits electronic payment or mails a warrant or check.

5. County and Contractor agree that the County shall not control or direct Contractor’s performance of the services under this contract, that Contractor performs work outside the usual course of the County’s business and that the Contractor is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed.
6. Notices. Notice to either party shall be in writing and personally delivered; sent by certified mail, postage prepaid, return receipt requested; or emailed to the County’s or Contractor’s representative designated below (or such party’s authorized representative). Any such notice shall be deemed received by the party (or such party’s authorized representative) on the earliest of the date of personal delivery, three (3) business days after deposit in the U.S. Mail, or upon sending of an email from which an acknowledgement of receipt has been received other than an out of office, unavailable, or undeliverable reply.

FOR COUNTY:	FOR CONTRACTOR:
Romalyn Watson 5500 Overland Ave San Diego, CA 92123 858.694.2370 Romalyn.Watson@sdcountry.ca.gov Above contact is designated as the Contracting Officer’s Representative for this Agreement (“COR”).	Annette Hubbell [REDACTED] [REDACTED] [REDACTED]

7. Compliance with Laws. Contractor shall at all times perform its obligations hereunder in compliance with all applicable federal, State, and local laws, rules, and regulations, current and hereinafter enacted, including facility and professional licensing and/or certification laws, and keep in effect any and all licenses, permits, notices and certificates as are required. Contractor shall further comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.

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8. County Policies and Requirements. Without limiting Section 7 above, Contractor shall specifically comply with the following, as applicable:
- a. Board of Supervisors Policy A-79, Interlocking Directorates
 - b. Board of Supervisors Policy A-120, Zero Tolerance for Fraudulent Conduct in County Services
 - c. Board of Supervisors Policy B-67, Environmentally Preferable Procurement
 - d. Board of Supervisors Policy C-25, County of San Diego Drug and Alcohol Use Policy
 - e. Section 32.801, et seq. of the San Diego County Code of Regulatory Ordinances, Prohibitions of AIDS Discrimination
 - f. Article IIIk (Section 84, et seq.) of the San Diego County Administrative Code, Affirmative Action Program for Vendors
9. As a material condition of this Agreement, Contractor agrees that Contractor, while performing service for County, on County property, or while using County equipment:
- a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
 - b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
 - c. Shall not sell, offer, or provide alcohol or a drug to another person; provided, however, that the foregoing restriction shall not be applicable to Contractor or an employee who as part of the performance of normal job duties and responsibilities prescribes or administers medically prescribed drugs.
10. DVB Participation. If this Agreement resulted from a solicitation containing Disabled Veteran Business (“DVB”) requirements and forms, such requirements and Contractor’s submitted forms are incorporated herein by reference to the extent not included as an Exhibit to this Agreement. Contractor shall make all commercially reasonable efforts to comply with all such DVB requirements, including meeting the DVB Percent of Utilization on Contractor’s DVB Subcontractor Participation Plan. Contractor shall maintain a rate of DVB utilization throughout the term of this Agreement that is reasonably in alignment with the progress of the Agreement (e.g. term, utilization, deliverables). Contractor shall provide to County, upon request, documentation sufficient to verify Contractor’s compliance with such requirements.
- If in County’s determination, Contractor is not in compliance with all DVB requirements, County may take corrective action, which may include (i) requiring Contractor to submit a corrective action plan acceptable to County detailing actions the Contractor will take to fulfill its DVB requirements and/or (ii) withholding of payments to Contractor equivalent to the amount of DVB underutilization. Such corrective actions shall be in addition to any other remedies the County may have under this Agreement or at law or equity.
11. Preferred Vendor. If this Agreement resulted from a solicitation where Contractor claimed Preferred Vendor status in its response per Section 405 of the San Diego County Administrative Code, Contractor shall perform a commercially useful function (as that term is defined in California Military and Veterans Code § 999 or successor statute) throughout the term of this Agreement.
12. Political Activities Prohibited. None of the funds, provided directly or indirectly, under this Agreement shall be used for any political activities or to further the election or defeat of any candidate for public office. Contractor shall not utilize or allow its name to be utilized in any endorsement of any candidate for elected office. Neither this Agreement nor any funds provided hereunder shall be utilized in support of any partisan political activities, or activities for or against the election of a candidate for an elected office.
13. Lobbying. Contractor shall comply with the lobbying ordinances of the County and ensure that its officers and employees comply before any appearance before the County Board of Supervisors. Except as required by this Agreement, none of the funds provided under this Agreement shall be used for publicity or propaganda purposes designed to support or defeat any legislation pending before State and federal legislatures, the Board of Supervisors of the County, or before any other local governmental entity. This provision shall not preclude Contractor from seeking necessary permits, licenses and the like necessary for it to comply with the terms of this Agreement.
14. Americans With Disabilities Act (ADA) 1990. Contractor shall not discriminate against qualified people with disabilities in employment, public services, transportation, public accommodations and telecommunications services in compliance with the Americans with Disabilities Act (ADA) and California Administrative Code Title 24.

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15. Religious Activity Prohibited. There shall be no religious worship, instructions, or proselytization as part of or in connection with the performance of this Agreement.
16. Contractor Permits and License. Contractor certifies that it possesses and shall continue to maintain or shall cause to be obtained and maintained, at no cost to County, all approvals, permissions, permits, licenses, and other forms of documentation required for it and its employees to comply with all existing foreign or domestic statutes, ordinances, and regulations, or other laws, that may be applicable to performance of work hereunder. County reserves the right to reasonably request and review all such applications, permits, and licenses prior to the commencement of any work hereunder.
17. Equal Opportunity. Contractor shall comply with the provisions of Title VII of the Civil Rights Act of 1964 in that it will not discriminate against any individual with respect to their compensation, terms, conditions, or privileges of employment nor shall Contractor discriminate in any way that would deprive or intend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee because of such individual's race, color, religion, sex, national origin, age, handicap, medical condition, sexual orientation or marital status.
18. Non-Discrimination. Contractor shall ensure that services and facilities are provided without regard to ethnic group identification, race, color, nation origin, creed, religion, age, sex, physical or mental disability, political affiliation or marital status in accordance with applicable laws, including, but not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C 2000d), Section 162 (a) of the Federal-Aid Highway Act of 1973 (23 U.S.C 324), Section 504 of the Rehabilitation Act of 1973, The Civil Rights Restoration Act of 1987 (P.L. 100-209), Executive Order 12898 (February 11, 1994), Executive Order 13166 (August 16, 2000), Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000-e), the Age Discrimination Act of 1975 (42 U.S.C. 6101), Article 9.5, Chapter 1, Part 1, Division 2, Title 2 (Section 11135, et seq.) of the California Government Code, Title 9, Division 4, Chapter 6 (Section 10800, et seq.) of the CCR and California Dept. of Social Services Manual of Policies and Procedures (CDSS MPP) Division 19.
19. Debarment, Exclusion, Suspension, and Ineligibility. Contractor certifies that, to the best of its knowledge, and except as disclosed to County and acknowledged in writing by County prior to the execution of this Agreement, Contractor, its employees, directors, officers, agents, subcontractors, vendors, consultants, and volunteers:
 - a. Are not presently debarred, excluded, suspended, declared ineligible, voluntarily excluded, or proposed for debarment, exclusion, suspension or ineligibility by any federal, state, or local department or agency;
 - b. Have not within a 3-year period preceding this Agreement been convicted of, or had a civil or administrative judgment rendered against them for, the commission of fraud or a criminal offense or civil action in connection with obtaining, attempting to obtain, or performing a public (federal, State, or local) transaction; violation of federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property; physical, financial or sexual abuse or misconduct with a patient or client, or medical negligence or malpractice;
 - c. Are not presently indicted or otherwise criminally, civilly or administratively charged by a government entity (federal, state, or local) with commission of any of the offenses enumerated in the paragraph above;
 - d. Have not within a 3-year period preceding this Agreement had one or more public transaction (federal, state, or local) terminated for cause or default.

Contractor shall have an ongoing duty during the term of this Agreement to disclose to the County any occurrence that would prevent Contractor from making the certifications contained in this Section on an ongoing basis. Such disclosure shall be made in writing within five (5) business days of when Contractor discovers or reasonably believes there is a likelihood of such occurrence.

20. Conflicts of Interest. Contractor presently has no interest, including but not limited to other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Contractor shall not employ any person having any such interest in the performance of this Agreement. Contractor shall not hire County's employees to perform any portion of the work or services provided for herein including secretarial, clerical and similar incidental services except upon the written approval of County. Without such written approval, performance of services under this Agreement by associates or employees of County shall not relieve Contractor from any responsibility under this Agreement
21. Prohibited Agreements. In accordance with Section 67 of the San Diego County Administrative Code, the County shall not contract with, and shall reject any bid or proposal submitted by the person or entities specified below, unless the Board of Supervisors finds that special circumstances exist which justify the approval of such contract:
 - a. Persons employed by the County or of public agencies for which the Board of Supervisors is the governing body;

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- b. Profit making firms or businesses in which employees described in subsection (a) serve as officers, principals, partners or major shareholders;
- c. Persons who, within the immediately preceding twelve (12) months, came within the provisions of subsection (a), and who (1) were employed in positions of substantial responsibility in the area of service to be performed by the contract, or (2) participated in any way in developing the contract or its service specifications; and
- d. Profit making firms or businesses in which the former employees described in subsection c. serve as officers, principals, partners or major shareholders.

Contractor certifies it is not a person or entity specified above and that it will promptly notify the County in the event it becomes a person or entity specified above during the term of this Agreement.

22. Indemnity. County shall not be liable for, and Contractor shall defend and indemnify County and the employees and agents of County (collectively "County Parties"), against any and all claims, demands, liability, judgments, awards, fines, mechanics' liens or other liens, labor disputes, losses, damages, expenses, charges or costs of any kind or character, including attorneys' fees and court costs (hereinafter collectively referred to as "Claims"), related to this Agreement or the work covered by this Agreement and arising either directly or indirectly from any act, error, omission or negligence of Contractor or its contractors, licensees, agents, servants or employees, including, without limitation, Claims caused by the sole passive negligent act or the concurrent negligent act, error or omission, whether active or passive, of County Parties. Contractor shall have no obligation, however, to defend or indemnify County Parties from a Claim if it is determined by a court of competent jurisdiction that such Claim was caused by the sole negligence or willful misconduct of County Parties. This obligation shall apply notwithstanding any limits of liability or other insurance required of Contractor hereunder.

Without limiting the foregoing, Contractor's defense and indemnity obligations under this Section shall specifically apply to any claim, suit, proceeding, demand, liability, loss, damage or expense (including but not limited to attorneys' fees) arising from or relating to a claim that any work performed pursuant to this Agreement infringes a patent, copyright, moral right, trademark, trade secret, or other intellectual property right of a third party. Without limiting the generality of the foregoing, if any portion of any the same or County's use of the same is, or in Contractor's or County's opinion is likely to be, held to infringe the rights of any third party, Contractor shall at its expense either (i) procure the right for County to use the infringing item free of any liability or expense to County to the full extent contemplated by this Agreement; or (ii) replace it with a non-infringing equivalent reasonably satisfactory to County. Without limiting the County's other rights and Contractor's obligations under this Section, County shall have the right to employ counsel at its own expense for, and participate in the defense of, any claim.

23. Insurance. Prior to execution of this Agreement, Contractor must obtain at its own cost and expense, and keep in force and effect during the term of this Agreement, including all extensions, the insurance specified in Exhibit B, Insurance Requirements, attached hereto.
24. Maintenance of Records. Contractor shall maintain and keep available all records within the County of San Diego for a minimum of three (3) years from the ending date of this Agreement unless a longer period is specified in the Statement of Work or unless County agrees in writing to an earlier disposition.
25. Audit Right. Pursuant to California Government Code Section 8546.7, the parties acknowledge that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.

Authorized federal, State and County representatives shall have the right to monitor, assess, and evaluate Contractor's performance pursuant to this Agreement, said monitoring, assessments, or evaluations to include but not be limited to audits, inspection of premises, reports, and interviews of project staff and participants.

At any time during normal business hours and as often as County may deem necessary, Contractor shall make available to County, State or federal officials for examination all of its records with respect to all matters covered by this Agreement and will permit County, State or federal officials to audit, examine and make excerpts or transcripts from such records, and to make audits of all invoices, materials, payrolls, records of personnel, information regarding clients receiving services, and other data relating to all matters covered by this Agreement. If an audit is conducted, it will be done in accordance with generally accepted government auditing standards as described in Government Auditing Standards, published for the United States General Accounting Office.

Termination for Convenience. The County may, by written notice stating the extent and effective date, terminate this Agreement for convenience in whole or in part, at any time. The County shall pay the Contractor, as full compensation for work performed in accordance with the terms of this Agreement until such termination the unit or pro rata price for any

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delivered and accepted portion of the work. County's termination of this Agreement for convenience shall not preclude County from taking any action in law or equity against Contractor for:

- i. Improperly submitted claims, or
- ii. Any failure to perform the work in accordance with the Statement of Work, or
- iii. Any breach of any term of condition of the Agreement, or
- iv. Any other matter arising from or related to this Agreement, whether known, knowable or unknown before, during or after the date of termination.

26. Termination for Default. The County may, by written notice of default to the Contractor, terminate this Agreement in whole or in part, should the Contractor fail to make satisfactory progress, fail to perform within the time specified, or fail to deliver in strict conformance to specifications or requirements set forth herein. The rights and remedies of County provided in this Section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If, after notice of termination of this Agreement under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Section XX, Termination for Convenience.

27. Full Cost Recovery of Investigation and Audit Costs. Contractor shall reimburse County (by direct payment or County withholding of payment, at County's sole discretion) for all direct and indirect expenditures incurred in conducting an audit/investigation when Contractor is found in violation (material breach) of the terms of the Agreement.

28. Disallowance. In the event the Contractor receives payment for work under Agreement that is later disallowed by the County, the Contractor shall promptly refund the disallowed amount to the County on request, or at its option, the County may offset the amount disallowed from any payment due to the Contractor under any contract with the County.

29. Assignment. This Agreement is assignable by County. Except as to any payment due hereunder, this Agreement is not assignable by Contractor without written approval of County.

30. Changes. The Director of Purchasing and Contracting or designee is the only County official authorized to modify this Agreement. The County may at any time, by written order, make changes within the general scope of this Agreement ("Change Order"). If any Change Order causes an increase or decrease in the cost or time required for the performance of the work under this Agreement, an equitable adjustment shall be made to the price, delivery schedule, or both. No other modification of this Agreement shall be valid unless it is in writing and signed by both parties.

31. Waiver. The waiver by one party of the performance of any term, provision, covenant or condition shall not invalidate this Agreement, nor shall it be considered as a waiver by such party of any other term, provision, covenant or condition.

32. Governing Law. This Agreement shall be governed, interpreted, construed and enforced in accordance with the laws of the State of California.

33. Timeliness. Time is of the essence for each provision of this Agreement.

34. Outcome-Based Measures. Where outcome-based measures are set forth in the Statement of Work, Contractor shall maintain, and provide to County upon County's request as often as County deems necessary, complete, and accurate data documenting such outcome measures under this Agreement. Such data may include, but is not limited to, statistics on outcomes, rates of success, and completion rate of deliverables.

35. Cartwright Act. Following receipt of final payment under this Agreement, Contractor assigns to the County all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright act (Chapter 2) (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County under this Agreement.

36. No Employees. By its signature below the Contractor certifies that it has no employees engaged in performance of any services hereunder, nor shall it subcontract or hire employees for the performance of the services except with the prior written approval of the County.

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37. Criminal Background Check. Contractor agrees to submit to a criminal background check, including submission of fingerprints, and that Contractor shall not perform any services until the County certifies that it is clear of any sexual and drug related convictions.

IN WITNESS WHEREOF, County and Contractor have executed this Agreement effective as of the date of the last signature below.

ANNETTE HUBBELL PRODUCTIONS
ANNETTE HUBBELL, Owner

COUNTY OF SAN DIEGO
RENE LELEVIER, Procurement Contracting Specialist
Department of Purchasing and Contracting

By: *Annette Hubbell*
Name: Annette Hubbell
Title: Owner
[REDACTED]
Date: May 27, 2023

By: 
Name: Rene Lelevier
Title: Procurement Contracting Specialist
Date: May 29, 2023

By electronically signing this document, all parties accept the use of electronic signatures.

Adobe Acrobat Sign Transaction Number: CBJCHBCAABAAFXbED2VzYeRI_SG8cnaLcJT2cUSB2xA-

**REQUEST FOR STATEMENT OF QUALIFICATIONS (RFSQ) #1568
Of 9
COUNTY OF SAN DIEGO LIBRARY
AS NEEDED EDUCATIONAL INSTRUCTORS AND ENTERTAINERS**

REQUEST FOR WORK

COUNTY OF SAN DIEGO
LIBRARY

SAN DIEGO COUNTY LIBRARY PROGRAM SERVICES STATEMENT OF WORK		
Services to be provided by: Annette Hubbell		Date: May 26, 2023
Dates/Times of Services: To be determined	SOW Prepared by: Annette Hubbell	
Locations of Services: To be determined		
<p>Program Objectives: To develop an appreciation of and respect for the various challenges women faced, how they met them, and what it looks like to victoriously overcome life's hardships. Examining these real life characters helps to understand how the past shapes relationships between people, communities, and the societies within which they live. It also helps one to think beyond one's current frame of reference to see other points of view.</p>		
<p>Description of Services: I bring to life the stories of once ordinary women who went from ordinary to extraordinary, paved the way for others, and left the world in a better place. Thoroughly researched for accuracy, you can choose from seven characters to comprise a performance to fit your time requirements. Each portrayal is about fifteen minutes long. Minimal costume changes during the performance heighten the experience.</p> <p>These seven characters are: Corrie ten Boom, Gladys Aylward, Amy Carmichael, Sojourner Truth, Mary McLeod Bethune, Elizabeth Fry, and Harriet Beecher Stowe. For more details, visit my website at www.annettehubbell.com</p>		
<p>Special Needs to be supplied by SDCL: literature lists specific to the branch where the program is being held. Other needs should be sent to the branch staff and availability will be confirmed by branch staff. N/A</p>		
<p>Criteria for Completion: Presentation of the program to interested participants that will result in positive feedback on the satisfaction surveys.</p>		
BFS form:		

COUNTY CONTRACT # 569178
FOR AS NEEDED INSTRUCTORS AND PERFORMERS
(INDIVIDUALS/ NO EMPLOYEES)
INSURANCE REQUIREMENTS

Within 10 working days of signing the contract, Contractor shall submit to County a copy of the certificates of insurance and appropriate separate endorsements to the actual insurance policy, evidencing that the Contractor has obtained for the period of the Contract, at its sole expense, insurance in the following forms of coverage and minimum amounts specified from insurance carriers with a Best Rating of no less than A, VII or a company of equal financial stability approved in writing by County's Risk Management Division:

- A. An occurrence policy of Commercial General Liability insurance including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability insuring Contractor against liability for bodily injury, personal injury or property damage arising out of or in connection with the Contractor's performance of work or service under this contract of not less than \$25,000 per occurrence and \$50,000 general aggregate. The County of San Diego, its officers, agents, employees, and volunteers shall be added as Additional Insured by separate endorsement to the Contractor's Insurance (at least as broad as ISO from CG 2010 11 85 or both CG 2010, CG 2026, CG 2033, or CG 2038; and CF 2037 forms if later revisions used).
- B. The policy shall be endorsed to state that coverage shall not be cancelled, except with prior written notice to the County.

Certificates of insurance and endorsements shall be sent to:

County of San Diego
Risk Management Division
5530 Overland Avenue, Suite 210
San Diego, CA 92123
Reference: Contract # 569728

If the contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. As a requirement of this contract any available insurance proceeds in excess of the specified minimum limits and coverage stated above, shall also be available to the County of San Diego.

Contractor shall be responsible to maintain the required insurance in effect for the duration of the Contract and shall submit certificates and endorsements as necessary to demonstrate insurance remains in effect. Failure to comply with this requirement is grounds for termination for cause effective immediately upon notice. The County of San Diego shall retain the right to review the coverage, form and amount of the insurance required herein and may require Contractor to obtain insurance reasonably sufficient in coverage, form and amount to provide adequate protection against the kind and extent of risk which exists at the time a change in insurance is required. County retains the right to demand a certified copy of any insurance policy required herein after 15 days notice.

Declaration of Service

I, the undersigned, declare:

That I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, California where the service occurred; and my business address is: 1600 Pacific Highway, Room 355, San Diego, California 92101.

On May 28, 2025, I served the following documents:

- **NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFFS' COMPLAINT**
- **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**
- **DECLARATION OF AUSTIN M. UHLER IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**
- **EXHIBIT 1 - COUNTY CONTRACT WITH HUBBELL PRODUCTIONS (REDACTED)**

in the following manner:

- By (**ECF filing**), I served each of the above referenced documents by E-filing, in accordance with the rules governing the electronic filing of documents in the United States District Court for the Southern District of California, as to the following parties:

Andrew R. Quinio, Esq.
PACIFIC LEGAL FOUNDATION
555 Capitol Mall, Suite 1290
Sacramento, CA 95814
Phone: (916) 419-7111
Email: aquinio@pacifical.org

Christopher D. Barnewolt, Esq.
PACIFIC LEGAL FOUNDATION
3100 Clarendon Boulevard, Suite 1000
Arlington, VA 22201
Phone: (202) 888-6881
Email: cbarnewolt@pacifical.org
(Attorneys for Plaintiffs)

I declare under penalty of perjury that the foregoing is true and correct.
Executed on May 28, 2025, at San Diego, California.

By: *s/Austin Uhler*
Email: Austin.Uhler@sdcounty.ca.gov

Hubbell, et al vs. Acosta, et al.
USDC No. 25-cv-01105-JAH-SBC