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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ANNETTE HUBBELL and
ANNETTE HUBBELL
PRODUCTIONS,

Plaintiffs,

v.

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

Defendants.

No. '25CV1105 WQH SBC

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND
DAMAGES**

INTRODUCTION

1
2 1. Annette Hubbell is an actress and a storyteller. A lover of
3 history, Annette wrote a play to pay tribute to the women she most
4 admires. When she portrays them on stage, Annette tells the stories of
5 these “Women Warriors” in their own words.

6 2. A longtime San Diego resident, Annette contracted with the
7 county library to perform her play. Annette gave the library a roster of
8 characters that she could perform. The library asked her to perform as
9 Harriet Beecher Stowe, Mary McLeod Bethune, and Harriet Tubman.
10 Annette then got to work preparing for her hometown performance.

11 3. Months later—and only weeks before her scheduled
12 performance—library administrators asked Annette to change the
13 characters they had previously requested her to portray. The library only
14 wanted Annette to perform white characters. Because two of the
15 characters the library initially wanted Annette to perform were African
16 American, the administrators asked Annette to change them to different
17 white characters. When Annette refused, the library cancelled her
18 performance.

19 4. If Annette’s skin had been the right color, county officials would
20 have allowed the performance to go ahead. But instead, county officials
21 denied Annette the opportunity to pay tribute to America’s heroines solely
22 because of her race.

23 5. The stories of America’s great historical figures are part of our
24 shared national heritage. Annette believes that passing that heritage
25 down through storytelling must be done without regard for the race or
26 color of the storyteller or the figures they portray. To do otherwise would
27 risk our shared humanity and common understanding that elevates the
28 content of one’s character over the color of one’s skin.

1 6. The San Diego County Library disagrees. It chose to gatekeep
2 our shared national heritage on the basis of race.

3 7. It is unfair and unjust for the government to treat individuals
4 differently on the basis of race. The government should never deny an
5 individual opportunities—including the opportunity to pay tribute to
6 American heroes and heroines—because of the color of his or her skin.

7 8. The San Diego County Library's blatant racial discrimination is
8 both illegal and unconstitutional under state and federal law. Because
9 San Diego County cancelled Annette's performance due to her race, the
10 County violated her right to equal treatment and equal protection under
11 the law. Annette brings this action to vindicate her constitutional and
12 statutory rights.

13 **JURISDICTION AND VENUE**

14 9. This action arises under the Fourteenth Amendment to the
15 United States Constitution; federal civil rights statutes 42 U.S.C. §§ 1981,
16 1983, and 2000d *et seq.*; and article I, section 31 of the California
17 Constitution.

18 10. The Court has jurisdiction over these federal claims under 28
19 U.S.C. §§ 1331 (federal question) and 1343(a) (redress for deprivation of
20 civil rights), because this action arises under the Constitution and laws of
21 the United States.

22 11. Supplemental jurisdiction over Plaintiffs' state-law claim exists
23 pursuant to 28 U.S.C. § 1367(a), because the events, parties, witnesses,
24 and injuries that form the basis of that claim are the same or so related
25 to the events, parties, witnesses, and injuries that form the basis of
26 federal claims that they form part of the same case or controversy and
27 derive from a common nucleus of operative facts.

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1 12. Declaratory relief and further necessary or proper relief is
2 authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

3 13. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(1)–
4 (2). The Defendants reside within this district and a substantial part of
5 the events giving rise to this claim have occurred or will occur in the
6 Southern District of California.

7 **PARTIES**

8 **Plaintiffs**

9 14. Plaintiff Annette Hubbell is a resident of California and lives in
10 San Diego. Ms. Hubbell is an author, a playwright, and an actress. She is
11 the owner of Annette Hubbell Productions. She is white.

12 15. Plaintiff Annette Hubbell Productions is a sole proprietorship
13 formed by Annette Hubbell for the purpose of providing education and
14 entertainment services.

15 **Defendants**

16 16. Defendant Migell Acosta is the Director of the San Diego County
17 Library. The Director exercises general supervision over all functions of
18 the county library. Mr. Acosta is sued in his individual and official
19 capacities.

20 17. Defendant Ebony Shelton is the Chief Administrative Officer of
21 San Diego County. The Chief Administrative Officer is responsible for
22 implementing the directives of the San Diego County Board of
23 Supervisors, managing the day-to-day operations of the San Diego County
24 government, and appointing the Director of the San Diego County
25 Library. Ms. Shelton is sued in her official capacity.

26 18. Defendant San Diego County Library (SDCL) is a public library
27 system and a part of the San Diego County government. SDCL is under
28 the supervision of the Chief Administrative Officer of San Diego County.

1 The Rancho Santa Fe Library is a branch of San Diego County Library.

2 19. Defendant San Diego County Board of Supervisors is the
3 legislative and executive branch of the San Diego County government.

4 20. Defendant San Diego County is a county government within the
5 State of California.

6 **FACTUAL ALLEGATIONS**

7 **I. Annette Hubbell Is an Actress and Storyteller of Historical** 8 **American Figures**

9 21. Annette Hubbell is an author, actress, and historian. A San
10 Diego native, Annette began writing and acting after she retired from a
11 long career in water management in North San Diego County.

12 22. In 2007, Annette formed her production company, Annette
13 Hubbell Productions, to showcase historical characters through theatrical
14 performances.

15 23. In 2019, Annette published *Eternity through the Rearview*
16 *Mirror: How Simple Faith Changes Everything—Seventeen Extraordinary*
17 *Lives*. Told in the first person, her book chronicles the lives of seventeen
18 historical figures who changed the world.

19 24. Annette adapted her book into a one-woman play titled *Women*
20 *Warriors*.

21 25. In *Women Warriors*, Annette brings to life the extraordinary
22 stories of ordinary women who transformed themselves and left the world
23 a better place. These women include Anne Bradstreet, Amy Carmichael,
24 Corrie ten Boom, Mary McLeod Bethune, Sojourner Truth, Gladys
25 Aylward, Harriet Beecher Stowe, Elizabeth Fry, and Harriet Tubman.
26 Because these characters are independent of each other, Annette can
27 portray up to eight of them in one performance to fit the time
28 requirements of her audience.

1 26. Annette's play has been a huge success, and she has performed
2 it many times at venues across the country.

3 II. San Diego County Library Invites Annette to Perform and Then
4 Cancels Her Performance Because of Her Race

5 27. In May 2023, Annette signed a contract with San Diego County,
6 agreeing to perform *Women Warriors* at a to-be-determined future date
7 for any (or all) of the 33 branches in the San Diego County Library system.
8 The County agreed not to control or direct Annette's performance.

9 28. On December 18, 2023, pursuant to the contract, Rancho Santa
10 Fe Library Branch Manager Christina Patterson invited Annette to
11 perform *Women Warriors* at the Rancho Santa Fe branch. She asked
12 Annette to portray three historical American women: Harriet Beecher
13 Stowe, Mary McLeod Bethune, and Harriet Tubman. Annette and the
14 county agreed that the performance would take place on March 21, 2024,
15 and that SDCL would pay Annette \$280, discounted from \$375 as a
16 courtesy.

17 29. On March 6, 2024, Ms. Patterson requested that Annette
18 change her performance and refrain from portraying the two African
19 American figures, Tubman and Bethune. The reason Ms. Patterson gave
20 was that "our administration was uncomfortable with you performing a
21 black character as a white woman." She asked Annette to replace Bethune
22 and Tubman with white figures. Exhibit A.

23 30. On the same day, Annette spoke over the telephone with the
24 supervisor of the Rancho Santa Fe branch, Rebecca Lynn, about the
25 administration's request to change her performance. Annette asked
26 whether she could "only honor women of courage and integrity if they're
27 white," and Ms. Lynn confirmed, saying something to the effect of, "that's
28 pretty much it."

1 31. On March 8, 2024, Annette informed Ms. Patterson that she
2 would decline the library's invitation to perform if it prohibited her from
3 portraying certain historical figures because of race.

4 32. Annette noted that Mary McLeod Bethune had once been
5 rejected from a job as a missionary because of her race, and asked how
6 this was different. Expressing her belief that it would be wrong "[t]o
7 exclude someone's story of bravery, courage, and integrity because of one's
8 race, gender, or anything else[,]" Annette respectfully requested that the
9 library reconsider. *Id.*

10 33. That same day, the library canceled Annette's performance
11 without any additional explanation. *Id.*

12 34. Annette subsequently reported the library's discriminatory
13 treatment of her to San Diego County Supervisor Joel Anderson,
14 prompting an inquiry and a response from the SDCL.

15 35. Following a review of the incident, SDCL Director Migell Acosta
16 wrote to Annette on June 25, 2024, and affirmed the library's decision to
17 have her change the performance. Mr. Acosta stated, "The decision was
18 discussed with our executive administration, as well as our Diversity and
19 Inclusion team in early March 2023 [sic], who concurred with SDCL's
20 decision to ask that Ms. Lynn request that you perform different
21 characters." Exhibit B.

22 III. The Impact of SDCL's Discriminatory Cancellation of Annette

23 36. The ordeal that SDCL put Annette through left her feeling
24 embarrassed, humiliated, and distressed. Annette dedicated extensive
25 time and effort to rehearse and refine her performance only to have SDCL
26 cancel it because of immutable traits that she had no control over.

27 37. As a result of what SDCL did to Annette, other opportunities to
28 perform diminished. A San Diego educational program for older adults

1 where Annette had previously taught classes initially agreed to have
 2 Annette perform her play for Women's History Month, but limited its
 3 contact with her following SDCL's cancellation.

4 38. Even though Annette portrays diverse historic figures with
 5 dignity, decency, and respect, she is concerned about what SDCL's abrupt
 6 cancellation of her performance might imply to audiences and hosts of
 7 other venues. Annette also worries that if SDCL's discrimination is
 8 permitted to persist, it will normalize government restrictions on actors
 9 and performers based on race, unfairly hindering artistic expression and
 10 opportunity. It is likely that Annette will receive fewer requests to
 11 perform as a result of SDCL's actions.

12 39. Most of all, Annette is "taken aback" and "mystified" by SDCL's
 13 conduct, stating, "In the five years of performing these characters, there
 14 has never been a hint of offense, even from anonymous surveys. And why
 15 should there be? How could we ever explore our common humanity with
 16 these kinds of restrictions?"¹ She continues to agree with Mary McLeod
 17 Bethune, that "Our aim must be to create a world of fellowship and justice
 18 where no man's skin, color or religion, is held against him."²

19 **CLAIMS FOR RELIEF**

20 **First Cause of Action**

21 **Violation of the Equal Protection** 22 **Clause of the Fourteenth Amendment**

23 **(42 U.S.C. § 1983)**

24 40. Plaintiffs incorporate and reallege each and every allegation
 25 contained in the preceding paragraphs of this Complaint.

26 ¹ Annette Hubbell, "Shades of Stories," AnnetteHubbell.com, Mar. 14,
 27 2024, available at <https://annettehubbell.com/shades-of-stories/>.

28 ² Mary McLeod Bethune, "My Last Will and Testament," August 1955.
 Available at <https://www.cookman.edu/history/last-will-testament.html>.

1 41. The Defendants' actions violated Plaintiffs' constitutional right
2 to the equal protection of the laws.

3 42. The Fourteenth Amendment to the United States Constitution
4 provides: "No State shall make or enforce any law which shall . . . deny to
5 any person within its jurisdiction the equal protection of the laws." U.S.
6 Const. amend. XIV, § 1.

7 43. Defendants Migell Acosta, Director of the San Diego County
8 Library; Ebony Shelton, Chief Administrative Officer of San Diego
9 County; the San Diego County Supervisors; and the County of San Diego
10 are each a "person" within the meaning of 42 U.S.C. § 1983.

11 44. Migell Acosta oversaw and ratified the racially discriminatory
12 consideration of Annette's performance, even though he knew or should
13 have reasonably known that such consideration violated Annette's right
14 to equal protection of the law.

15 45. The San Diego County Board of Supervisors and Ebony Shelton,
16 as Chief Administrative Officer of San Diego County, knew or reasonably
17 should have known of the discriminatory consideration of Annette's race
18 and knowingly refused to discontinue the policy and practice.

19 46. Defendants have acted and are acting "under color of state law"
20 within the meaning of section 1983.

21 47. Defendants discriminated against Annette Hubbell because of
22 her race in violation of the Equal Protection Clause.

23 48. Because Defendants categorized individuals on the basis of
24 race, their decisions and policies are subject to strict scrutiny.

25 49. Defendants' racial classifications do not advance a compelling
26 government interest.

27 50. Even if Defendants' use of racial classifications did advance a
28 compelling government interest, Defendants cannot show that their race-

conscious library programming decisions are narrowly tailored to advance that interest.

51. Defendants’ race-based decisions used race as a negative.

52. Defendants’ race-based decisions used race as a stereotype.

53. Annette Hubbell has been harmed, and will continue to be harmed, by Defendants’ racial discrimination.

Second Cause of Action

Violation of the Right to Be Free from Racial Discrimination in Contracting

(42 U.S.C. § 1981; 42 U.S.C. § 1983)

54. Plaintiffs incorporate and reallege each and every allegation contained in the preceding paragraphs of this Complaint.

55. The Defendants’ actions also violated Plaintiffs’ federal statutory right to be free from racial discrimination in contracting.

56. 42 U.S.C. § 1981(a) provides that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens[.]”

57. Section 1981(b) defines “make and enforce contracts” to include “the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.”

58. Section 1981 protects “all persons” against racial discrimination in the making or enforcement of contracts, including white persons. *McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 286–87 (1976).

59. Defendants made a contract with Plaintiffs for the provision of services and failed to honor that contract because of race.

1 60. Annette Hubbell's race was the "but for" cause of Defendants'
2 actions.

3 61. Persons who suffer discrimination in violation of section 1981
4 are entitled to both equitable and legal relief, including damages.

5 62. Plaintiffs have suffered damages as a result of Defendants'
6 racially discriminatory actions.

7 **Third Cause of Action**

8 **Racial Discrimination in a Program Receiving Federal**
9 **Financial Aid, in Violation of Title VI of the Civil Rights Act**

10 **(42 U.S.C. § 2000d *et seq.*; 42 U.S.C. § 1983)**

11 63. Plaintiffs incorporate and reallege each and every allegation
12 contained in the preceding paragraphs of this Complaint.

13 64. The Defendants have violated Plaintiffs' federal statutory right
14 not to be discriminated against in a program or activity receiving federal
15 financial assistance.

16 65. Title VI of the 1964 Civil Rights Act (42 U.S.C. §2000d *et seq.*)
17 provides, in relevant part: "No person in the United States shall, on the
18 ground of race, color, or national origin, be excluded from participation in,
19 be denied the benefits of, or be subjected to discrimination under any
20 program or activity receiving Federal financial assistance."

21 66. San Diego County and San Diego County Library are recipients
22 of federal funds and consequently are obligated not to discriminate by
23 race under Title VI.

24 67. Despite their Title VI obligations, Defendants discriminated
25 against Plaintiffs because of Annette's race.

26 68. Defendants' actions were made under color of law.

27 69. Title VI is privately enforceable.

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1 70. Discrimination that violates the Equal Protection Clause of the
2 Fourteenth Amendment of the United States Constitution constitutes a
3 violation of Title VI when committed by an institution that accepts federal
4 funds.

5 71. Defendants have intentionally discriminated against Annette
6 on the basis of race.

7 72. Plaintiffs have been and will continue to be injured because of
8 Defendants' racial discrimination.

9 **Fourth Cause of Action**

10 **Violation of California's Ban on**
11 **Racial Discrimination in Public Contracting**

12 **(Art. I, § 31 of the California Constitution)**

13 73. Plaintiffs incorporate and reallege each and every allegation
14 contained in the preceding paragraphs of this Complaint.

15 74. Defendants have violated the California Constitution's
16 prohibition on racial discrimination in public contracting.

17 75. Article I, section 31 of the California Constitution provides that
18 the State of California and its counties and other subdivisions "shall not
19 discriminate against . . . any individual or group on the basis of race, sex,
20 color, ethnicity, or national origin in the operation of . . . public
21 contracting." Cal. Const. art. I, § 31(a), (f).

22 76. Defendants are government actors who work for a county of the
23 State of California and are bound by the California Constitution.
24 Consequently, they are bound not to engage in discrimination on the basis
25 of race, color, or ethnicity in the operation of public contracting.

26 77. Section 31 "categorically prohibits discrimination" and does not
27 have a compelling state interest exception. *Coral Constr., Inc. v. City &*
28 *Cnty. of San Francisco*, 50 Cal. 4th 315, 327 (Cal. 2010).

1 78. Defendants had a contract with Plaintiffs.

2 79. Defendants failed to honor their contract with Plaintiffs because
3 of Annette Hubbell's race.

4 80. Defendants' racially discriminatory actions were not required
5 by any court order or consent decree. Cal. Const. art. I, § 31(d).

6 81. Defendants' racially discriminatory actions were not necessary
7 to "establish or maintain eligibility for any federal program, where
8 ineligibility would result in a loss of federal funds to the State." Cal.
9 Const. art. I, § 31(e).

10 **REQUEST FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request the following relief:

12 A. A declaration that Defendants' racially discriminatory
13 treatment of Annette Hubbell violated the Equal Protection
14 Clause of the Fourteenth Amendment, 42 U.S.C. § 1981, Title
15 VI of the Civil Rights Act, and article I, section 31 of the
16 California Constitution;

17 B. An entry of a permanent injunction forbidding Defendants and
18 Defendants' officers, agents, affiliates, servants, successors,
19 employees, and all other persons in active concert or
20 participation with Defendants from treating individuals
21 differently on the basis of race when approving or denying
22 library programming;

23 C. Compensatory damages;

24 D. Punitive damages;

25 E. An award of attorney's fees, costs, and expenses in this action
26 pursuant to 42 U.S.C. § 1988;

27 F. An award of nominal damages in the amount of \$1.00; and

28 G. Any other relief the Court deems just, necessary, or proper.

1
2 DATED: May 1, 2025.

3 Respectfully submitted,

4 ANDREW R. QUINIO
5 CHRISTOPHER D. BARNEWOLT*
6 PACIFIC LEGAL FOUNDATION

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9 *Attorneys for Plaintiffs*

10 *pro hac vice motion forthcoming
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