

FEBRUARY 15, 2022

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street, Suite 3000
Sacramento, CA 95811

RE: February 17, 2022 Agenda Item 10. Update Regarding Voiding of Contracts that Violate Government Code Section 1090

Dear Commissioners,

As you are aware, the item before you has come to your attention due to the recent precedent setting case your Commission took up in October and November regarding Charles Grace/Grace Environmental Services, the General Manager of the San Simeon Community Services District and the 1090 violation that occurred when the agreement was approved in January 2016.

You may not know that San Simeon Community Services District (SSCSD) is a recognized Severely Disadvantaged Community of just 445 people, with only 195 registered voters. Over 60 percent of the community is Hispanic, low-income, working class.

You also may not know that none of the current Board members were on the board in 2016 when the Grace 1090 violation occurred. All of the present Board members obtained their seats by volunteering for vacancies after resignations, and incumbent appointees ran uncontested in the last election. The present SSCSD Board does not have the institutional memory or factual history to understand the gravity of the violation. Additionally, the SSCSD Board has been threatened with legal action by Grace's attorney, Amber Maltbie, Nossaman LLP, see November 16, 2021 letter (attached).

The SSCSD Board went into Closed Session following the Maltbie letter, December 8, 2021, to entertain the request for indemnification of Grace, covering legal fees that may soar over \$100,000. When taken together, the FPPC's investigation and San Luis Obispo County District Attorney's Unlawful Business Practices and False Advertising complaint on behalf of the People of the State of California (attached to your agenda under public comment) costs could bankrupt the tiny district.

The staff report for this item poses a question to your Commission: "Should the Commission wish to expand its jurisdiction to include authority to void contracts that violate Section 1090 when a party is unwilling or unable to do so, the Commission would need to seek such authority through legislative action." In the instant case, Grace/GES, I'm of the opinion the statute has run and San Simeon won't benefit from this authority. Yet, it

From the Desk of Julie Tacker

is highly plausible that there are other small communities around the State that these violations occur, yet the public is unaware of their recourse. Your Commission should be able to step in on behalf of the public and void the contract per the intent of the law. It is requested that you pursue this authority.

Thank you for your attention to the matters above. Please feel free to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink that reads "Julie Tacker". The signature is written in a cursive, flowing style.

Julie Tacker, Activist
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Refer To File # 504017-0001

November 16, 2021

Mr. Jeffrey Minnery
Adamski Moroski Madden Cumberland & Green LLP

Via email only jminnery@ammcqlaw.com

Re: Indemnification

Dear Mr. Minnery:

We write on behalf of Mr. Grace and Grace Environment Services, LLC (hereinafter “GES”) regarding Mr. Grace’s request for indemnification pursuant to the 2016 Professional Services Agreement and 2021 Amendment and Restatement of Professional Services Agreement (hereinafter “Agreement”) between GES and the San Simeon Community Services District (hereinafter “SSCSD”).

As you are aware, Mr. Grace is entitled to indemnification for claims that arise from or relate to certain actions he takes pursuant to the Agreement. Specifically, Section X(H) provides (in relevant part):

“GES shall not be liable to SSCSD and SSCSD shall indemnify and hold harmless GES, its officers, supervisors, employees, agents and representatives from any claim, loss, liability, damage, injury, or expense, including attorney’s fees which arise or are related to this Amendment and Restatement from any cause other than intentional, willful, or negligent operations or conduct of GES or any of its employees, agents or subcontractors.”

The Fair Political Practices Commission (“FPPC”) and the San Luis Obispo County District Attorney’s office (“DA”) recently concluded a joint investigation into Mr. Grace and GES on a wide range of allegations. The investigations were initiated after several complaints were filed against Mr. Grace and GES by two individuals known to be prolific filers of frivolous complaints against SSCSD, individual members of the SSCSD board of directors, business owners in the community, and other local public officials.¹ After a nearly 15 month investigation, Mr. Grace has entered into a stipulated settlement with the FPPC on a finding of a single violation which the FPPC has categorized as inadvertent.²

¹ See, as just one example, FPPC “[Complaint and Case Information Portal](#)” and search by complainant name.

² We anticipate the FPPC will vote to approve the stipulated settlement at its November 18, 2021 meeting.

Separately, the DA has filed a civil complaint against Mr. Grace in San Luis Obispo Superior Court. Given Mr. Grace's full cooperation with the investigation, and repeated offers to find mutually acceptable solutions, we were surprised and disappointed with this decision. The civil complaint includes nine counts alleging violations of California's Unfair Competition Law ("UCL") and unfair business practices.³ Rather than conduct a point by point review, we offer the following observations with regard to the interplay of the SSCSD Board of Director's duties and the allegations made against Mr. Grace and GES in the complaint.

As a threshold matter, we note that the DA's presentation of "facts" in the civil complaint both relies on and deliberately leaves out information and/or gross mischaracterizations to bolster the legal theories contained therein. Even with this being the case, the allegations in both the DA and FPPC matters involve actions by Mr. Grace taken either at the direction of the Board of Directors, or which were reported to, at a minimum, the Board Chair.

Additionally, a UCL claim relies on the violation of an underlying statute. Most of the counts in the complaint rely on alleged violations of statutes that only a public agency can violate, such as the Brown Act, the California Public Records Act, and California Constitutional provisions protecting the right to public records. These statutes have remedies that the DA's office could have chosen to pursue against the SSCSD. For example, if the DA believes a meeting of the legislative body is held or conducted in violation of the Brown Act, he can demand a cure and correct. (Cal. Gov. Code § 54960.1). Similarly, if the DA believes that an agency wrongfully withholds public records, he can seek an injunction to compel disclosure. (Cal. Gov. Code § 6264.) As you are undoubtedly aware, the Constitution prohibits *government* from infringing on First Amendment rights. Private individuals and companies cannot "violate" another's First Amendment's rights. As directed against Mr. Grace, this claim is completely legally frivolous, which the DA must know.

It is the Board of Directors that has oversight over District contractors, and not District contractors who have oversight over the Board of Directors. In order to substantiate its legal theories, the DA's complaint flips this reality on its head, which must not be accepted

For the reasons set forth above, Mr. Grace requests that his request for indemnification be put forward for Board consideration at the earliest opportunity in compliance with Brown Act notice requirements.

Sincerely,



Amber Maltbie
Nossaman LLP

³ Although the DA has couched his complaint in inflammatory language, none of the allegations contained in either the FPPC's administrative action or the DA's civil action supports a determination that Mr. Grace engaged in intentional, willful, or negligent conduct. Indeed, many of the purported "facts" set forth in the civil complaint are demonstrably false based on the DA's own supporting exhibits. The complaint in its entirety is without merit, and we believe an unfortunate byproduct of the DA's myopic agenda to needle in SSCSD's operations at the wish of Henry Krcziuk.