

CALIFORNIA TAXPAYERS ACTION NETWORK

814 Morena Boulevard, Suite 107, San Diego, CA 92110



June 10, 2015

Don Lee – President via Email:
dlee@farmersagent.com

Michael Wermers – Member via Email:
mwermers@gpsd.com

Martha Deutsch - Vice President via Email:
mdeutsch@socal.rr.com

Terry Ragins – Member via Email:
ragins@socal.rr.com

Mark Steffen – Clerk via Email:
msteffen1@pacbell.net

George Mannon - Superintendent via Email:
superintendent@tUSD.org

Request TUSD join Taxpayers in litigation to recover \$109 million to TUSD

Dear Board Members & Superintendent:

Let me call your attention to an opportunity to recover \$109 million to the Torrance Unified School District. All that is required is for TUSD to stop opposing and instead join with Taxpayer Jim McGee in his conflict of interest lawsuits to recover funds TUSD has paid to its Construction Program Manager consultant Balfour Beatty Construction (BBC) to construct the following TUSD school facilities:

<u>Meeting Date</u>	<u>Resolution #</u>	<u>Court Case</u>	<u>Project Name</u>	<u>Cost</u>
12/19/2012	AS-03-12/13	YC068686	Hickory Elementary School Modernization	\$8,351,168
12/19/2012	AS-04-12/13	YC068686	Madrona Middle School Modernization	\$7,691,716
12/19/2012	AS-05-12/13	YC068686	North High School Modernization	\$31,777,940
3/17/2014	AS-09-13/14	YC069859	Riviera Elementary School Modernization	\$5,126,430
3/17/2014	AS-10-13/14	YC069859	Towers Elementary School Modernization	\$5,831,126
3/31/2015	AS-16-14/15	YC070614	Torrance High School Modernization	\$39,336,998
5/18/2015	AS-18-14/15	YC070614	Edison Elementary School Modernization	\$5,088,743
5/18/2015	AS-19-14/15	YC070614	Yukon Elementary School Modernization	\$4,664,621
5/18/2015	AS-20-14/15	YC070614	Edison Elementary School Infrastructure	\$681,795
5/18/2015	AS-21-14/15	YC070614	Yukon Elementary School Infrastructure	\$626,012

Total: \$109,176,549

By way of hourly consulting contracts renewed annually since September 2, 2008, TUSD has separately paid BBC millions of dollars to act as TUSD's exclusive Construction Program Manager. TUSD has little if any of its own staff to independently advise it on how to spend its \$549.3 million in Measure Y, Z, T and U school construction bond proceeds.

Because TUSD hired BBC to be its overall Construction Program Manager consultant California law prohibits BBC from contracting with TUSD to build the same projects BBC was previously hired to plan, develop, budget and manage. This is like hiring a fox to guard your henhouse. No matter how nice and reputable the fox is, common sense tells you not to hire a fox to guard your henhouse. For this reason California law prohibits consultants to public entities from having a financial interest in the projects they are supposed to consult on.

Taxpayer McGee is going to win. The legal premise of Taxpayer's conflict of interest lawsuits to recover \$109 million for TUSD was affirmed on January 23, 2015 by California's Second District Court of Appeal (James D. McGee v. Torrance Unified School District, et al. (McGee #1) Appeal No. B252570) where the Appellate Court concluded Taxpayer's lawsuit adequately alleged BBC's construction contracts are void due to their conflict of interest and all monies TUSD paid to BBC must be returned to TUSD. The Appellate Court directed the Superior Court in Torrance to allow Taxpayer's lawsuit to continue. TUSD's Answer to Taxpayer's lawsuit is due to be filed by June 29, 2015.

Taxpayer's legal premise has been further solidified by a June 1, 2015 decision by California's Fifth District Court of Appeal (Stephen K. Davis v. Fresno Unified School District et al. (Davis) Appeal No. F068477) which confirmed corporate consultants cannot be awarded construction contracts if, as in the case of BBC, they have previously acted as consultants to a school district relative to those same contracts.

The recent McGee and Davis appellate decisions follow well established California law that consultants to public entities cannot be awarded contracts arising out of the subject matter on which they consult. Stigall v. City of Taft (1962) 58 Cal.2d 565, California Housing Finance Agency v. Hanover/California Management and Accounting Center, Inc. (2007) 148 Cal. App.4th 682 and Hub City Solid Waste Services, Inc., v. City of Compton (2010) 186 Cal. App. 4th 1114.

TUSD's attorneys in Taxpayer's lawsuits are intimately familiar with the recent Torrance and Fresno decisions since they unsuccessfully argued against the taxpayers' conflict of interest claims in both. **How much money has TUSD paid to date to OPPOSE Taxpayer's efforts to return \$109 million to TUSD?**

Now that the Second District Court of Appeal has concluded Taxpayer's lawsuits are proper, why would TUSD pay another dollar to continue to oppose Taxpayer's efforts? The improper dismissal of Taxpayer's second lawsuit (YC069859) on the grounds of frivolousness will be reversed in light of the above referenced Appellate Courts' decisions in McGee #1 and Davis.

I implore you to immediately direct TUSD's attorneys to join in Taxpayer's pending lawsuits and provide all documents and assistance necessary to expedite the return of all funds TUSD has paid to BBC for construction services (as opposed to management services). Toward that end I have attached a sample Answer you can have your attorneys add their name to and file with the Court before June 29, 2015 to join with Taxpayer in seeking to recover \$109 million to TUSD.



G. Rick Marshall
Chief Financial Officer,
California Taxpayers Action Network

Copy to:

Dr. Donald Stabler, Deputy Superintendent
via Email to dstabler@tusd.org

Karl Walther, Citizen's Bond Oversight Committee Chairman
via personal delivery

Mike Moran, Citizen's Bond Oversight Committee Vice-Chairman
via Email to mmoranfive@gmail.com

Nathan Mintz, Citizen's Bond Oversight Committee Taxpayer's Association Representative
via Email to nathan.m.mintz@gmail.com

DRAFT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES, SOUTHWEST DISTRICT**

JAMES D. MCGEE, an individual;)
CALIFORNIA TAXPAYERS ACTION)
NETWORK; a California Non-Profit Public)
Benefit Corporation; on behalf of the)
TORRANCE UNIFIED SCHOOL)
DISTRICT and the taxpayers therein)

Plaintiffs,

v.

BALFOUR BEATTY CONSTRUCTION,)
LLC; a Delaware Limited Liability)
Company; TORRANCE UNIFIED SCHOOL)
DISTRICT, a California public school)
district; ALL PERSONS INTERESTED IN)
THE MATTERS OF Torrance Unified)
School District's approval and execution of)
Site Leases, Subleases, and Construction)
Services Agreements and Other Acts)
Relating to the Torrance High School Project)
defined in Resolution # AS-16-14/15, the)
Edison Elementary School Project defined in)
Resolution # AS-18-14/15, the Yukon)
Elementary School Project defined in)
Resolution # AS-19-14/15, the Edison)
Elementary School Project defined in)
Resolution # AS-20-14/15 and the)
Yukon Elementary School Project defined in)
Resolution # AS-21-14/15 with Balfour)
Beatty Construction, LLC; and DOES 1)
through 100, inclusive)

CASE NUMBER: YC070614
[Related Cases: YC068686, YC069859]

**TORRANCE UNIFIED SCHOOL
DISTRICT'S ANSWER TO COMPLAINT**

Judge: Hon. Stuart M. Rice
Dept: B
Complaint Filed: May 29, 2015
Trial Date: Not Set

[Jury Trial Demanded]

DRAFT

1 Defendant Torrance Unified School District (“DISTRICT”) answers the allegations in
2 Plaintiffs James D. McGee and California Taxpayers Action Network’s Complaint as follows:

3 1. All material allegations related to the challenged contracts as defined in the Complaint
4 are admitted.

5 2. DISTRICT further alleges that it and its members have an interest in the validity of the
6 contracts of Torrance Unified School District which are the subject of this action.

7 WHEREFORE, Defendant DISTRICT prays for the following relief against Defendants
8 TORRANCE UNIFIED SCHOOL DISTRICT, BALFOUR BEATTY CONSTRUCTION, LLC.; ALL
9 PERSONS INTERESTED and DOES 1 through 100 (and any and all other parties who may oppose
10 Defendant DISTRICT or Plaintiff in this proceeding):

11 A. A judgment determining or declaring that the challenged contracts do not comply with
12 all applicable laws in at least some respect, rendering the challenged contracts null and void, invalid,
13 or otherwise without legal effect;

14 B. That BALFOUR BEATTY CONSTRUCTION, LLC., and DOES 1 through 100 be
15 ordered to pay back to TORRANCE UNIFIED SCHOOL DISTRICT all monies received under the
16 challenged contracts;

17 C. All legal fees and other expenses incurred in connection with this proceeding, including
18 but not limited to reasonable attorney fees as authorized by the Code of Civil Procedure; and

19 D. Any and all further relief that this Court may deem appropriate.

20
21 Dated: _____

22
23 By: _____

24
25
26
27
28