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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SAN DIEGO COUNTY OFFICE OF
EDUCATION,

Plaintiff,

CASE NO. 13-CV-1647-BEN (BLM)

**ORDER DIRECTING
ADDITIONAL BRIEFING ON
MOTION TO DISMISS**

vs.

JULIA POLLOCK, as parent on
behalf of M.P., a minor; COUNTY OF
SAN DIEGO; SAN DIEGO-
IMPERIAL COUNTIES
DEVELOPMENTAL SERVICES,
INC., dba the SAN DIEGO
REGIONAL CENTER FOR THE
DEVELOPMENTALLY DISABLED,

Defendants.

AND RELATED COUNTERCLAIMS

Before this Court is a Joint Motion to Dismiss the Second Through Fifth Claims for Relief Set Forth in the First Amended Complaint, filed by Defendant County of San Diego (County) and Defendant San Diego-Imperial Counties Development Services, Inc., dba San Diego Regional Center for the Developmentally Disabled (Regional Center) (collectively, “Defendants”). (Docket No. 94). Defendants ask this Court to dismiss the remaining claims against them pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(h)(3).

1 **BACKGROUND**

2 A. Procedural History

3 This case arises out of a due process decision rendered by the California State
4 Office of Administrative Hearings (OAH) under the Individuals with Disabilities
5 Education Act (IDEA). M.P. is a minor who was arrested for murder and assault with
6 a deadly weapon, and was detained at Juvenile Hall. (First Am. Compl. [FAC] ¶ 1).
7 While in Juvenile Hall, the San Diego County Office of Education (SDCOE) was
8 responsible for providing M.P. with the free appropriate public education (FAPE)
9 guaranteed by the IDEA. (*Id.* ¶ 4; 20 U.S.C. §§ 1400, *et seq.*; CAL. EDUC. CODE §§
10 48645.1, 48645.2, 56150). M.P. was deemed incompetent to stand trial on August 21,
11 2012. (FAC ¶ 5). On November 16, 2012, M.P. filed for due process with OAH
12 through his mother, Pollock. (AR 2409). M.P. sought an order directing SDCOE to
13 place him at a residential treatment center (RTC), and awarding him compensatory
14 education.

15 The ALJ conducted hearings, and rendered a decision on April 16, 2013. (AR
16 2409-2458). In the decision, the ALJ ruled in M.P.’s favor as to two issues, and
17 ordered that, within 60 days, SDCOE conduct an occupational therapy (OT)
18 assessment, and convene an Individualized Education Program (IEP) meeting to
19 determine M.P.’s present levels of performance, goals, and services in the area of
20 occupational therapy. (AR 2457). The ALJ also ordered that SDCOE complete a
21 search for an appropriate residential placement, and to convene an IEP meeting to
22 review and implement the placement, within 45 days. (*Id.*)

23 On July 15, 2013, SDCOE filed a Complaint in which it sought judicial review
24 of the ALJ’s decision. (Docket No. 1). A First Amended Complaint (FAC) was filed
25 on October 24, 2013. (Docket No. 9). The first claim for relief, against Pollock alone,
26 appealed the ALJ’s decision under the IDEA. The second claim for relief sought
27 declaratory relief against Pollock and the County. The third claim sought declaratory
28 relief against Pollock and Regional Center. A fourth claim asserted breach of contract

1 against Regional Center. The fifth claim demanded contribution and indemnification
2 from the County and Regional Center. Pollock filed a counterclaim for attorney’s fees
3 pursuant to the IDEA. (Docket No. 6). Regional Center filed a counterclaim for
4 affirmation of the OAH order, declaratory relief, and breach of contract. (Docket No.
5 30). On June 20, 2014, this Court granted Pollock’s motion to dismiss the claims
6 against her and vacated the IDEA hearing decision. (Docket No. 86).

7 B. Remaining Claims and Allegations

8 SDCOE’s claims against the County and Regional Center are premised upon its
9 contention that it was not responsible for making and paying for the residential
10 placement of M.P. It contends that the County or Regional Center should have borne
11 these burdens, rather than imposing them upon SDCOE. SDCOE alleged that this
12 Court had jurisdiction over the declaratory relief claims pursuant to 28 U.S.C.
13 § 2201(a) and 28 U.S.C. § 1331. (FAC ¶ 27). It further alleged that this Court had
14 supplemental jurisdiction over the claims for breach of contract and contribution and
15 indemnification pursuant to 28 U.S.C. § 1367. (*Id.*)

16 Defendants County and Regional Center filed the instant Joint Motion on July
17 11, 2014, contending that this Court lacks subject matter jurisdiction over SDCOE’s
18 remaining claims against the Defendants. (Docket No. 94). SDCOE filed an
19 Opposition on July 28, 2014. (Docket No. 99). Defendants replied on August 4, 2014.
20 (Docket No. 103).

21 **LEGAL STANDARD**

22 A district court is required to dismiss an action if at any time it determines that
23 it lacks subject matter jurisdiction. FED. R. CIV. P. 12(h)(3). A party may challenge
24 subject matter jurisdiction by bringing a motion to dismiss pursuant to Federal Rule of
25 Civil Procedure 12(b)(1). FED. R. CIV. P. 12(b)(1).

26 A. Federal Question Jurisdiction

27 District courts have “original jurisdiction of all civil actions arising under the
28 Constitution, laws, or treaties of the United States” pursuant to 28 U.S.C. § 1331. A

1 case arises under federal law in one of two ways.

2 First, a federal law can create the cause of action asserted. *Gunn v. Minton*, 133
3 S. Ct. 1059, 1064 (2013). Such cases account “for the vast bulk of suits that arise
4 under federal law.” *Id.*

5 Second, there is a “special and small category” of cases where jurisdiction lies
6 where a claim originates in state, rather than federal law. *Id.* at 1064-65 (quoting
7 *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 699 (2006)). The
8 Supreme Court has stated that: “federal jurisdiction over a state law claim will lie if a
9 federal issue is: (1) necessarily raised, (2) actually disputed, (3) substantial, and (4)
10 capable of resolution in federal court without disrupting the federal-state balance
11 approved by Congress.” *Id.* at 1065 (characterizing the conclusion of *Grable & Sons*
12 *Metal Prods., Inc. v. Darue Eng’g & Mfg.*, 545 U.S. 308 (2005)). If all four
13 requirements are met, jurisdiction is proper because of the “‘serious federal interest in
14 claiming the advantages thought to be inherent in a federal forum,’ which can be
15 vindicated without disrupting Congress’s intended division of labor between state and
16 federal courts.” *Id.* (citing *Grable*, 545 U.S. 313-14)).

17 B. Declaratory Judgment Act

18 The Declaratory Judgment Act (DJA) authorizes a court of the United States to
19 grant declaratory relief where there is “a case of actual controversy within its
20 jurisdiction,” subject to certain exceptions. 28 U.S.C. § 2201(a). The court may
21 “declare the rights and other legal relations of any interested party seeking such
22 declaration, whether or not further relief is or could be sought.” *Id.*

23 The purpose of declaratory relief is to “afford an added remedy to one who is
24 uncertain of his rights and who desires an early adjudication thereof without having to
25 wait until his adversary should decide to bring suit, and to act at his peril in the
26 interim.” *Shell Oil Co. v. Frusetta*, 290 F.2d 689, 692 (9th Cir. 1961). Declaratory
27 relief may be sought by “any interested party” involving an actual controversy that “has
28 not reached a stage at which either party may seek a coercive remedy and in cases

1 where a party who could sue for coercive relief has not yet done so.” *Seattle Audubon*
2 *Soc. v. Moseley*, 80 F.3d 1401, 1405 (9th Cir. 1996) (citation omitted).

3 The DJA does not extend new jurisdiction to federal courts. *Skelly Oil Co. v.*
4 *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); *Lear Siegler, Inc. v. Adkins*, 330
5 F.2d 595, 599 (9th Cir. 1964). Instead, the DJA makes a new remedy available where
6 jurisdiction otherwise exists. *Skelly Oil*, 339 U.S. at 671; *Lear Siegler*, 330 F.2d at
7 599. To obtain declaratory relief in federal court, there must be an independent basis
8 for jurisdiction. *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*,
9 873 F.2d 1221, 1225 (9th Cir. 1989) (citation omitted).

10 In determining whether federal question jurisdiction exists over a request for a
11 declaratory judgment pursuant to the DJA, the well-pleaded complaint rule applies.
12 “The plaintiff’s claim itself must present a federal question ‘unaided by anything
13 alleged in anticipation of avoidance of defenses which it is thought the defendant may
14 interpose.’” *Skelly Oil*, 339 U.S. at 672 (quoting *Taylor v. Anderson*, 234 U.S. 74, 75-
15 76 (1914)). The Supreme Court’s decision in *Skelly Oil* has come to stand for the
16 proposition that “if, but for the availability of the declaratory judgment procedure, the
17 federal claim would arise only as a defense to a state created action, jurisdiction is
18 lacking.” *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Tr. for S.*
19 *Cal.*, 463 U.S. 1, 16 (1983) (characterizing *Skelly Oil*). In determining if federal
20 question jurisdiction exists over claims for declaratory judgment, courts have looked
21 to the potential coercive actions that could be brought. *See Skelly Oil*, 339 U.S. at 672
22 (no federal question jurisdiction where if plaintiff sought damages or specific
23 performance of the contracts, it could not do so in federal court). Courts often look to
24 the “character of the threatened action.” *Medtronic, Inc. v. Mirowski Family Ventures,*
25 *LLC*, 134 S. Ct. 843, 848 (2014) (quoting *Public Serv. Comm’n of Utah v. Wycoff Co.*,
26 344 U.S. 237, 248 (1952)). In doing so, they ask whether a “coercive action” brought
27 by the declaratory judgment defendant would “necessarily present a federal question.”
28 *Id.* (quoting *Franchise Tax Bd.*, 463 U.S. at 19).

1 met the “case or controversy” requirement of Article III was the IDEA claim against
2 Pollock, which has now been dismissed. (Mot. at 3-4). They contend that the
3 declaratory relief claims are premised upon state substantive law, and that there is
4 therefore no federal jurisdiction for these claims. (*Id.* at 4-5). In the Opposition,
5 SDCOE asserts that the “central issues” in the remaining claims which turn on
6 questions of federal law. (Opp’n at 4).

7 However, neither party addresses the requirements for federal question
8 jurisdiction in the context of a declaratory relief claim. It is not clear to this Court what
9 the parties believe that the “coercive action” would be in this matter. The Court
10 therefore determines that it will require additional briefing, as discussed below.

11 B. State Law Claims

12 The jurisdictional allegations in the FAC do not assert federal question
13 jurisdiction over the claims for breach of contract or contribution and indemnification.
14 (FAC ¶ 27). Instead, SDCOE asserted only supplemental jurisdiction pursuant to 28
15 U.S.C. § 1367. (*Id.*) It now appears that SDCOE may be arguing that federal question
16 jurisdiction is appropriate as to these claims. The Court determines that it requires
17 additional briefing, as discussed below.

18 **CONCLUSION**

19 The parties are therefore **ORDERED** to file additional briefing that addresses
20 the following topics:

21 1) What is the “coercive action” to consider in this case with respect to each
22 declaratory relief cause of action? Does it present a federal question?

23 2) Can this Court consider asserted bases for the existence of a federal question
24 which are not clearly alleged in the FAC?

25 3) Can SDCOE assert that this Court has federal question jurisdiction over claim
26 four or claim five if it did not do so in jurisdictional allegations in the FAC?

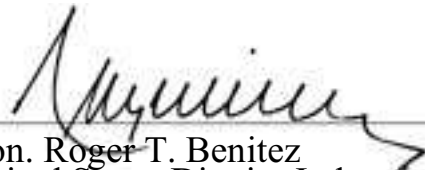
27 4) Can this Court grant leave to amend if subject matter jurisdiction is not
28 established by the FAC?

1 5) If this Court finds that there is no subject matter jurisdiction over SDCOE's
2 remaining claims, should the Court retain jurisdiction over any of Regional Center's
3 counterclaims?

4 Both Plaintiff and Defendants are required to file a brief of no more than **fifteen**
5 **pages** on the above questions no later than **August 22, 2014**. Any response must be
6 filed by **August 29, 2014** and may not exceed **ten pages**. There will be no reply briefs
7 or oral argument without further order of this Court.

8 **IT IS SO ORDERED.**

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10 DATED: August 11, 2014

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13 Hon. Roger T. Benitez
14 United States District Judge
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