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SAN DIEGO COUNTY CA

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of America, San Diego Chapter, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

CENTRAL DIVISION

ASSOCIATED GENERAL
CONTRACTORS OF AMERICA, SAN
DIEGO CHAPTER, INC., a non-profit
California corporation,

Petitioner/Plaintiff,

v.

SAN DIEGO UNIFIED SCHOOL
DISTRICT, a California public entity, and
DOES 1 through 100,

Respondents/Defendants.

CASE NO: 37-2009-00095057-CU-WM-CTL

VERIFIED PETITION FOR WRIT OF
MANDATE, PROHIBITION, OR OTHER
APPROPRIATE RELIEF; AND
COMPLAINT FOR:

- (1) WRIT OF MANDATE;
- (2) INJUNCTIVE RELIEF; AND
- (3) DECLARATORY RELIEF

GENERAL ALLEGATIONS

1. Venue is proper in this court because the parties reside or are situated within this judicial district, this action arises out of events located within this judicial district, and the alleged events or omissions giving rise to Petitioner and Plaintiff Associated General Contractors of America, San Diego Chapter, Inc.'s ("AGC - San Diego" or "Petitioner") claims occurred or will occur in San Diego County and this judicial district.

2. AGC - San Diego is and all times mentioned was a non-profit California corporation with its principal place of business at 6212 Ferris Square, Diego, California, 92121.

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3. AGC – San Diego is informed and believes that defendant and respondent San Diego Unified School District (the “District”) is, and at all times was, a public entity organized and existing under and by virtue of the laws of the State of California, with its principal place of business at 4100 Normal Street, San Diego, California, 92103, in the County of San Diego.

4. The District is a political subdivision of the state of California within the meaning of California Labor Code (“Labor Code”) section 1721.

5. The District is primarily engaged in the education of children from kindergarten through twelfth grade.

6. The District is not an “employer” within the meaning of National Labor Relations Act or within the meaning of the Labor Management Relations Act.

7. The District is not primarily engaged in the building and construction industry.

8. This petition/complaint concerns public works construction projects to be awarded by the District that are funded in whole or in part by Proposition S (2008) bond funds.

9. The State of California has created an administrative framework for the approval and the deregistration of apprenticeship programs. Unless otherwise noted, the term “apprenticeship program,” as used in this petition/complaint has the same meaning as in Labor Code section 3075 and California Code of Regulations, title 8, section 205.

10. California’s Department of Industrial Relations contains a Division of Apprenticeship Standards (“DAS”), which in turn includes the California Apprenticeship Council (“CAC”), which oversees and administers apprenticeship programs in California.

11. DAS and CAC exercise plenary authority over the approval and deregistration of apprenticeship programs for California public works construction projects.

12. AGC-San Diego does not know the true names and capacities of defendants sued as DOES 1 through 100, and therefore sues them by fictitious names. AGC-San Diego is informed and believes DOES 1 through 100, are in some way responsible for the events and

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1 necessity for AGC-San Diego's claims for relief described in this petition/complaint. AGC-
2 San Diego will seek leave to amend this petition/complaint when the true names and capacities
3 of these defendants have been ascertained.

4 13. At all relevant times, each defendant was an agent, principal, representative,
5 alter ego, joint venturer, partner and/or employee of the others and each was at all times acting
6 within the course and scope of said agency, representation, relationship and/or employment
7 and with the permission of the others.

8 PROPOSITION S AND THE CALIFORNIA PREVAILING WAGE LAW

9 14. Proposition S is a \$2.1 billion bond measure approved by the voters of the
10 County of San Diego on November 4, 2008, to provide funds for the repair and renovation of
11 District education facilities through approximately 180 California public works projects
12 throughout the District (the "Projects").

13 15. Each of the Projects is covered by the California prevailing wage law, Labor
14 Code sections 1720-1815 ("PWL").

15 16. The PWL governs all "public works" in California.

16 17. "Public works" under this law refers generally to construction projects that are
17 paid for in whole or in part out of public funds. Because of this, there are laws regarding many
18 aspects of the construction projects to protect the public's interest.

19 18. One of the legal requirements for working on a California public works project
20 is the employment and training of apprentices for those employers who wish to pay
21 construction workers the apprenticeship wage rate established by the California Department of
22 Industrial Relations, Division of Labor Statistics and Research.

23 19. The specifications for each of the Projects contain or will contain the
24 requirement that all contractors and subcontractors comply with the PWL, including
25 apprenticeship obligations under Labor Code section 1777.5 and the applicable regulations.

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APPRENTICESHIP UNDER THE CALIFORNIA PREVAILING WAGE LAW

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20. The California Legislature has declared that “apprenticeship programs are a vital part of the education system of California.” (§ 1 of Stats.1999, c. 903 (A.B. 921).)

21. The Shelley-Maloney Apprentice Labor Standards Act of 1939, Labor Code sections 3070-3099.4, as amended, has the purpose and goal “to strengthen the regulation of apprenticeship programs in California, to ensure that all apprenticeship programs approved under Chapter 4 (commencing with Section 3070) of Division 3 of the Labor Code meet the high standards necessary to prepare apprentices for the workplaces of the future...”

22. Under the PWL, apprenticeship programs that have received final approval by the DAS/CAC are eligible to supply apprentices to, and to train apprentices on, *any* California public works project.

23. Such apprentices are required to be employed under either the apprenticeship standards applicable to an approved apprenticeship program or the CAC rules and regulations.

24. As set forth in Labor Code section 3075, “[a]n apprenticeship program may be administered by a joint apprenticeship committee, unilateral management or labor apprenticeship committee, or an individual employer.”

25. Programs are approved “... in any trade in the state or in a city or trade area, whenever the apprentice training needs justify the establishment.”

26. California Code of Regulations, title 8, section 212.2, sets forth the exclusive administrative mechanism for the eligibility and approval of apprenticeship programs for California public works projects.

27. Specifically, that regulation states, among other things, that in order to achieve approval, an apprenticeship program must show adequate evidence to the CAC and/or DAS of the following:

- commitment to provide safe work site facilities and safe equipment sufficient to train the apprentices;

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- commitment to provide skilled workers as trainers at the work site who meet the criteria for journeyman or instructor;
- adequate arrangements for related and supplemental instruction pursuant to Labor Code section 3074;
- ability to offer training and supervision in all work processes of the apprenticeable occupation;
- the program's sponsor's ability, including financial ability, and commitment to meet and carry out its responsibility under federal and state law and regulations applicable to the apprenticeable occupation and for the welfare of the apprentice.

28. Likewise, CAC is given the *exclusive authority* to deregister a previously approved apprenticeship program only where the circumstances set forth in California Code of Regulations, title 8, section 212.4 exist, and only after the procedures established by California law for deregistration have been followed.

29. Labor Code section 1777.5, and California Code of Regulations, title 8, sections 230-230.1, set forth the requirements for contractors to train and employ apprentices on public works projects.

30. The regulatory scheme requiring apprentices on public works includes specific notice, employment, and payment conditions. For example, at the outset of each California public works project, contractors and subcontractors must send contract award information to the apprenticeship program for which the contractor or subcontractor has already been approved, and must train apprentices on the California public works projects according to its apprenticeship program's standards.

31. Contractors and subcontractors that are not already approved to train apprentices in a DAS/CAC-approved apprenticeship program, and that desire to employ apprentices on California public works projects, must send contract award information to *all* approved apprenticeship programs in the area where the work is to be performed. The

1 contractor or subcontractor at its option indicate in such information whether it will train
2 apprentices under an apprenticeship program's DAS/CAC-approved standards or whether the
3 apprentices will be trained under CAC rules and regulations.

4 32. Where an apprenticeship program approves a contractor or subcontractor to
5 train apprentices under the CAC rules and regulations, the contractor or subcontractor shall not
6 be obligated to make contributions to any trust fund or employee benefit plan unless the
7 contractor or subcontractor voluntarily so agrees.

8 33. In addition, contractors and subcontractors who employ journeymen or
9 apprentices on California public works projects are required to pay training contributions to the
10 applicable apprenticeship program or CAC, unless otherwise required by law and by voluntary
11 agreement.

12 34. At the end of each fiscal year, CAC distributes training contributions received
13 by it to multiemployer apprenticeship programs in the manner specified by California law.

14 THE DISTRICT'S APPRENTICESHIP POLICY AT ISSUE

15 35. Instead of following the apprenticeship dictates of the Labor Code, and its
16 implementing regulations, the District has decided to usurp the authority of the DAS and CAC,
17 and to develop its own policy and procedures for apprenticeship training and employment on
18 the Projects.

19 36. On or about January 13, 2009, the District's Board of Education passed and
20 adopted a resolution (the "Resolution") directing its staff to negotiate a special agreement for
21 the Projects providing exclusively "for the involvement of state-approved *joint-labor*
22 *management apprenticeship programs* for the training and development of future generations
23 of workers." (emphasis added.)

24 37. In other words, the District voted to exclude from the Projects all apprentices
25 enrolled and trained under the standards of approved apprenticeship programs that are not
26 joint-labor management apprenticeship programs.

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1 38. The District's policy regarding the employment of apprentices on the Projects
2 was subsequently confirmed as follows:

3 The term "Apprenticeship Program" as used [on the Projects] shall be defined
4 as a joint labor management apprenticeship program certified by the State of
5 California as provided in the Schedule A's [which are the local collective -
bargaining agreements in the area.]

6 39. On or about May 26, 2009, and again on or about July 28, 2009, the District
7 passed motions reaffirming and implementing this policy.

8 40. AGC-San Diego is informed and believes, and therefore alleges, that the
9 District is continuing to take action to implement its policy of permitting only joint labor-
10 management apprenticeship programs be allowed to supply apprentices to the Projects.

11 41. This District policy expressly conflicts with apprenticeship law in California
12 and it eliminates and impermissibly restricts participation on the Projects for all apprenticeship
13 programs in California for training under their standards, regardless of their prior approval by
14 the DAS/CAC, except certain identified programs hand-picked by the District.

15 42. As a result, the District's policy violates the Labor Code and related regulations,
16 which permit contractors to utilize *any approved* apprenticeship program in which they
17 participate to fulfill apprenticeship requirements on public works projects, including the
18 Projects.

19 AGC - SAN DIEGO'S STANDING TO SUE

20 43. AGC – San Diego has been in operation since 1927, as a trade association
21 whose members include both general contractors and subcontractors. AGC – San Diego's
22 general contractor and subcontractor members bid on California public works projects
23 throughout San Diego County, California, including California public works projects awarded
24 by the District.

25 44. AGC – San Diego exists to foster, protect and promote the common interest of
26 its members. In pursuit of those goals, AGC – San Diego, among other things, supports fair
27 and non-discriminatory competitive bidding practices for both public and private construction
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1 projects. AGC – San Diego is also involved with local, state, and other public agencies for the
2 purpose of establishing and maintaining fair and non-discriminatory competitive business
3 practices.

4 45. AGC – San Diego is the sponsor of a CAC-approved apprenticeship program
5 known as the Associated General Contractors of America, San Diego Chapter, Inc.
6 Apprenticeship And Training Program (“AGC Apprenticeship Program.”)

7 46. The AGC Apprenticeship Program is not a collectively-bargained “joint-labor
8 management apprenticeship program” within the meaning of the District’s policy described
9 above.

10 47. Since in or about 1988, the AGC Apprenticeship Program has been approved by
11 CAC to train apprentices in certain trade classifications in San Diego County.

12 48. The AGC Apprenticeship Program is a multi-employer apprenticeship program.

13 49. The AGC Apprenticeship Program offers practical on-the-job training combined
14 with classroom instruction. The duration of the program is between 2 and 4 years, depending
15 upon the craft. Upon successful completion, apprentices graduate and are awarded certificates
16 by the AGC-San Diego and the State of California. Since in or about 1988, the AGC
17 Apprenticeship Program has supplied apprentices to numerous California public works projects
18 awarded by the District.

19 50. The AGC Apprenticeship Program is currently approved in San Diego County
20 for the following trade classifications: carpenter, cement mason, drywall lather, drywall
21 finisher, heavy equipment operator, painter and laborer.

22 51. The AGC – San Diego Apprenticeship Program trains its apprentices under
23 standards approved by the DAS/CAC.

24 52. AGC – San Diego offers participation in the AGC Apprenticeship Program on
25 behalf of its qualified general contractor and subcontractor members as a benefit of
26 membership.

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53. AGC – San Diego is injured in fact by the District Resolution and policy described above because, among other things, it can no longer attract members based upon a representation that the AGC Apprenticeship Program can be used on the Projects.

54. AGC-San Diego and its general contractor and subcontractor members are injured because the AGC Apprenticeship Program will not receive grants from the CAC contributions for work performed on the Projects.

55. In addition, general contractor and subcontractor members are forced, over their objection, to accept financial or administrative obligations to the apprenticeship programs imposed by the District’s policy in violation of applicable regulations including California Code of Regulations, title 8, section 230.1, subdivision (c).

56. AGC - San Diego general contractor and subcontractor members include the following:

A. Members who are signatory or a party to collective-bargaining agreements covering all or some of the construction workers they employ.

B. Members who are not signatory or a party to any collective-bargaining agreements covering any of the employees they employ.

57. For general contractor and subcontractor members who either have no or some, but not all, construction workers who are covered by collective bargaining agreements, those general contractor and subcontractor members utilize DAS/CAC-approved apprenticeship programs, including the AGC Apprenticeship Program, that are not collectively bargained to obtain and train apprentices. It is the desire of the AGC-San Diego general contractor and subcontractor members to continue to utilize DAS/CAC-approved apprenticeship programs, including the AGC Apprenticeship Program, that are not collectively bargained on the Projects and to train those apprentices under the apprenticeship program’s approved standards or the CAC’s rules and regulations.

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1 58. However, the District's policy regarding apprentices on the Projects requires the
2 general contractors and subcontractors bidding on such work to violate the PWL, and precludes
3 AGC general contractor and subcontractor members from utilizing the AGC Apprenticeship
4 Program or other DAS/CAC-approved apprenticeship programs to train apprentices under the
5 standards for these programs or the rules and regulations promulgated by the CAC.

6 59. Because of the District's policy, general contractor and subcontractor members
7 of AGC – San Diego are deterred from seeking to perform work on the Projects.

8 60. As a result, AGC – San Diego, as the sponsor of the AGC Apprenticeship
9 Program, has suffered and will continue to suffer irreparable injury.

10 61. As a further result, AGC – San Diego's general contractor and subcontractor
11 members have suffered, and will continue to suffer, irreparable injury.

12 62. In addition to its standing to sue in its own right, AGC – San Diego has standing
13 to prosecute this action on behalf of its general contractor and subcontractor members for the
14 following reasons:

- 15 A. AGC – San Diego's general contractor and subcontractor members are
16 suffering and will continue to suffer irreparable injury as a result of the
17 District's policy.
- 18 B. Each member of AGC – San Diego who has suffered or will suffer a
19 irreparable injury has standing to sue in its own right.
- 20 C. Because only prospective injunctive relief is requested, neither the
21 claims asserted nor the relief requested require the participation of
22 individual members of AGC – San Diego.
- 23 D. The prosecution of this action is germane to AGC – San Diego's
24 organizational purpose as described above.

25 63. Both AGC – San Diego and its general contractor and subcontractor members
26 have a beneficial interest in the right of any AGC – San Diego general contractor or
27 subcontractor member to employ apprentices, and to pay apprentices so employed at the
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1 applicable apprentice prevailing wage rate, so long as the apprentice is duly enrolled in an
2 apprentice program that is approved under the applicable provisions of the Labor Code.

3 64. AGC – San Diego and its general contractor and subcontractor members also
4 have a beneficial interest in seeing that California public works projects are awarded by the
5 District in full and complete compliance with the PWL, and its implementing regulations, and
6 that all contractors on California public works projects comply with the PWL.

7 65. AGC – San Diego specifically and expressly disclaims any intent to state a
8 claim for relief or cause of action that arises under the Constitution, laws or treaties of the
9 United States. AGC – San Diego specifically and expressly disclaims any intent to state a
10 cause of action or claim for relief under the Labor Management Relations Act, the National
11 Labor Relations Act, the Fitzgerald Act, or the Employee Retirement Income Security Act of
12 1974.

13 FIRST CAUSE OF ACTION

14 (Writ of Mandate – Against District and DOES 1 through 100)

15 66. AGC – San Diego incorporates by reference paragraphs 1 through 65, above, as
16 though set forth in full at this point.

17 Violations of the California Prevailing Wage Law, Labor Code Sections
18 1777.5 and 1730 et seq., and California Code of Regulations, Title 8, Sections 200 et seq.

19 67. Labor Code sections 1777.5 and 1730 et seq. require that contractors be
20 permitted to employ apprentices on California public works projects as long as the apprentices
21 are properly training under apprenticeship standards that have been approved by the
22 DAS/CAC.

23 68. The District's Resolution and policy restricting its Proposition S projects to only
24 certain apprentices training under collectively-bargained apprenticeship programs and those
25 programs' standards violates the Labor Code and applicable regulations.

26 69. The District's policy, in effect, has deregistered all non collectively-bargained
27 apprenticeship programs for the Projects.

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70. Because the District's policy circumvents the Labor Code and its regulations relating to apprentices, the District has proceeded without, or in excess of, its jurisdiction, and the District's policy is improper and should be invalidated.

71. Defendants acted arbitrarily, capriciously and in violation of State law, and in violation of AGC – San Diego's rights and its members' rights under State law. As a result of the District's violation of the requirements of the Labor Code relating to apprentices on the Projects, including the failure and refusal to permit training of apprentices from the AGC Apprenticeship Program under its standards, AGC – San Diego and its members have and will suffer grave and irreparable harm.

72. AGC – San Diego and its members have no plain, speedy and adequate remedy, in the ordinary course of law.

73. As a result of the District's acts and/or omissions, and due to the important rights involved affecting the public interest, AGC – San Diego is entitled to attorneys' fees under Code of Civil Procedure section 1021.5.

SECOND CAUSE OF ACTION

(Claim For Injunctive Relief Pursuant to Civil Code Section 3422 –
Against District and DOES 1 through 100)

74. AGC – San Diego incorporates by reference paragraphs 1 through 73, above, as though set forth in full at this point.

75. The District's policy relating to apprentices on the Projects is unlawful, and in violation of State law, and AGC – San Diego will sustain grave and irreparable harm as a result of its application on the Projects. Pecuniary compensation would not afford adequate relief. Accordingly, AGC – San Diego is entitled to equitable, injunctive relief directing and compelling the District to refrain from carrying out or enforcing the District's Resolution or policy in any way.

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1 76. AGC – San Diego has exhausted administrative procedures, if any, or is not
2 required to do so, and AGC – San Diego has no plain, speedy, or adequate remedy, in the
3 ordinary course of law, because no other means exist for AGC – San Diego to obtain relief.

4 77. As a result of the District’s acts and/or omissions, and due to the important
5 rights involved affecting the public interest, AGC – San Diego is entitled to attorneys’ fees
6 under Code of Civil Procedure section 1021.5.

7 THIRD CAUSE OF ACTION

8 (Claim For Declaratory Relief Pursuant To Code of Civil Procedure Section 1060 –
9 Against District and DOES 1 through 100)

10 78. AGC – San Diego incorporates by reference paragraphs 1 through 77 above, as
11 though set forth in full at this point.

12 79. A good faith dispute and controversy exists between AGC-San Diego and the
13 District with respect to the legality of the Resolution and the District’s apprenticeship policy
14 for the Projects, and the legal rights and duties of the parties.

15 80. AGC-San Diego requests declaratory judgment be made as to the legality of the
16 Resolution and the District’s apprenticeship policy, including a determination of any question
17 of validity.

18 81. As a result of the District’s acts and/or omissions, and due to the important
19 rights involved affecting the public interest, AGC – San Diego is entitled to attorneys’ fees
20 under Code of Civil Procedure section 1021.5.

21 PRAYER FOR RELIEF

22 WHEREFORE, AGC – San Diego prays for judgment and other relief as follows:

23 ON THE FIRST CAUSE OF ACTION:

24 1. For a Writ Of Mandate directing the District to set aside, overturn, and
25 withdraw the Resolution and refrain from acting according to the District’s apprenticeship
26 policy for the Projects, and allowing all contractors to use any approved apprenticeship
27 program on the Projects provided the provisions of California law are followed; or

1 2. In the alternative, for an order to show cause directed to the District as to why
2 the Court should not issue such a writ.

3 ON THE SECOND CAUSE OF ACTION:

4 1. For preliminary and permanent injunctive relief precluding the District from
5 acting pursuant to the Resolution or the District's apprenticeship policy for the Projects, or
6 otherwise restricting contractors' legal right to use any approved apprenticeship program on
7 the Projects provided the provisions of California law are followed.

8 ON THE THIRD CAUSE OF ACTION:

9 1. For a judicial determination and declaration that the Resolution and the
10 District's apprenticeship policy for the Projects are illegal and invalid under State law, and
11 therefore the District may not proceed in any way according to the Resolution or its
12 apprenticeship policy, and that all contractors shall be allowed to use any approved
13 apprenticeship program on the Projects provided the provisions of California law are followed.

14 ON ALL CAUSES OF ACTION:

15 1. For recovery of costs, including attorneys' fees pursuant to Code of Civil
16 Procedure section 1021.5; and

17 2. For further relief as the court deems just.

18 DATED: July 30, 2009

Respectfully submitted,

MARKS, GOLIA & FINCH, LLP

By: 

STEPHEN J. SCHULTZ

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CHAD T. WISHCHUK

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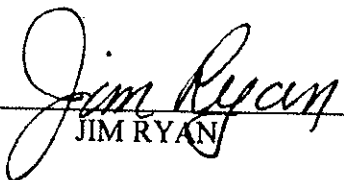
VERIFICATION

I, Jim Ryan, am Executive Vice President of Associated General Contractors of America, San Diego Chapter, Inc., and have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE, PROHIBITION, OR OTHER APPROPRIATE RELIEF; AND COMPLAINT, and know its contents.

The matters stated in the foregoing document are true of my own knowledge, or based on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

Executed at San Diego, California on this 27 th day of July, 2009.



JIM RYAN