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Associated General Contractors of America,
7 San Diego Chapter, Inc. and Associated General
Contractors of America, San Diego Chapter, Inc.
8 Apprenticeship and Training Trust Fund

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SAN DIEGO CHAPTER,
12 INC., a California non-profit organization;
ASSOCIATED GENERAL CONTRACTORS
13 OF AMERICA, SAN DIEGO CHAPTER,
INC., APPRENTICESHIP AND TRAINING
14 TRUST FUND,

15 Plaintiffs-Petitioners,

16 vs.

17 THE STATE OF CALIFORNIA,

18 Defendant-Respondent.

Case No. 37-2019-00056150-CU-MC-CTL

Case Assigned to The Honorable _____

**COMPLAINT FOR DECLARATORY
RELIEF AND INJUNCTIVE RELIEF,
AND PETITION FOR A WRIT OF
MANDATE**

(Cal. Const. Art. I, § 7(A); Cal. Const. Art.
IV, § 16; Cal. Const. Art. XI, § 5(a))

19
20 Plaintiffs-Petitioners Associated General Contractors of America, San Diego Chapter, Inc.
21 (“AGC”) and the Associated General Contractors of America, San Diego Chapter, Inc.
22 Apprenticeship and Training Trust Fund (hereinafter, the “AGC Apprenticeship Program”)
23 (collectively, “Plaintiffs-Petitioners”), hereby allege and request relief as follows:

24 **FACTUAL BACKGROUND**

25 1. The City of San Diego (“City”) is a Charter City in the State of California, and as a
26 Charter City it has home rule/qualified constitutional autonomy in that, per the California
27 Constitution, it may “make and enforce all ordinances and regulations in respect to municipal
28 affairs, subject only to restrictions and limitations provided in their several charters and in respect

1 to other matters they shall be subject to general laws.” Cal. Const. Art. XI, § 5(a).

2 2. On June 5, 2012, voters in the City approved Proposition A, the Fair and Open
3 Competition in Construction Ordinance, pursuant to which San Diego Administrative Code §§
4 22.4401-22.4408 was enacted on July 10, 2012 (the “Ordinance”). The Ordinance states that the
5 City “shall not require a Contractor on a Construction Project to “execute or otherwise become a
6 party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or performing
7 a contract.” *Id.* § 22.4402.

8 3. The Ordinance defines a Project Labor Agreement as “any pre-hire, collective
9 bargaining or similar type of project specific labor agreement entered into with one or more Labor
10 Organizations, employees or employee representatives that establishes the terms and conditions of
11 employment on a Construction Project.”

12 4. The Ordinance incorporates as its premise that it is enacted to effectuate the voters’
13 desire that “the City should treat union and non-union Contractors equally and not give special
14 advantages to either. All City Construction Project job opportunities should be open equally to
15 both union and non-union workers. Fair and open competition helps the City maximize
16 government efficiency by getting the best quality work for the best price for the taxpayers.” *Id.* §
17 22.4401 (Statement of the People’s Intent).

18 5. The Ordinance further states that “the construction of this Ordinance shall be
19 applied by the Mayor and City Council and interpreted judicially *so as to most fully implement the*
20 *Statement of the People’s Intent.*” *Id.* at § 22.4405 (emphasis supplied).

21 6. On February 19, 2019, the City began soliciting construction contract proposals for
22 the “North City Pure Water Facility” (the “Pure Water Facility Contract”), which the City states
23 has an “Estimated Bid Value” of \$398,000,000.00. Bids for the Pure Water Facility Contract were
24 formerly due by May 31, 2019.

25 7. Among the Pure Water Facility Contract’s specifications and provided in its
26 “Submittal Requirements” is the following labor force condition: “[A]ll apprentices used on the
27 Project shall further be registered in Joint Labor Management Apprentice Programs [(“JLMAP”)]
28 approved by the State of California.” *See* Bidding Documents for the North City Pure Water

1 Facility, § 11.1. Further, the “Submittal Requirements” state that documentation “demonstrating
2 that all apprentices working on the Project will be registered in a Joint Labor Management
3 Apprenticeship Program” shall be “submitted to the City within 30 days after bid opening, unless
4 additional time is granted by the City in its sole discretion.” *Id.* § 11.2.

5 8. The City reaffirmed this requirement in response to two requests for information
6 (RFIs) stating that “All apprentices used on the project must be registered in Joint Labor
7 Management Apprenticeship Programs...” (Question 12 in Addendum B and Question 501 in
8 Addendum E).

9 9. Since the enactment of the Ordinance, the City never included the above
10 requirements regarding the use of apprentices working under a City construction contract. Thus,
11 this is first time since the enactment of the Ordinance that the City has attempted to impose such a
12 requirement on its construction contractors. The City also intended to impose on two other
13 contracts for the overall Pure Water San Diego Program being built by the City.

14 10. In order to perform the contracts, prospective contractors need to use various types
15 of employees, including journeymen and apprentices in various construction trades.

16 11. Apprentices receive their training and journeymen certifications through various
17 types of apprenticeship training programs. Apprentices working for unionized contractors receive
18 their training through union-sponsored apprentice programs, known as JLMAPs, while contractors
19 needing apprentices for trades not covered by a union contract for those trades use non-JLMAP
20 training programs as the means for their apprentices to be trained and ultimately to become
21 journeymen.

22 12. Many of these apprenticeship programs are registered and approved by the State of
23 California. Among those programs is the AGC Apprenticeship Programs, provided by the AGC to
24 its member contractors. The AGC Apprenticeship Program is the largest apprenticeship training
25 in the City of San Diego and its surrounding areas not restricted to union members.

26 13. The City’s requirement that all apprentices used on the Pure Water Facility
27 Contract be registered with a JLMAP constitutes an unlawful proxy for the requirement that
28 contractors be a party to Project Labor Agreements, *i.e.*, contracts with unions applicable only to

1 the contractors' employees working on the Project, which is unlawful and unprecedented under the
2 Ordinance.

3 14. The City's requirement that all apprentices used on the Pure Water Facility
4 Contract be registered with a JLMAP precludes non-union contractors, including AGC's
5 members, who do not enter into Project Labor Agreements from bid eligibility because, absent
6 them doing so, they cannot comply with the requirement that they use only JLMAP apprentices.
7 This requirement conditions performance on using apprentices only from JLMAPs, access to
8 which requires the contractors to enter into a Project Labor Agreement, and thereby precludes the
9 use of apprentices from state-approved non-union apprenticeship programs, as well as effectively
10 and wrongfully conditions performance on all contractors being parties to Project Labor
11 Agreements.

12 15. The JLMAP requirement therefore imposes a bid requirement proscribed by the
13 Ordinance, which was enacted for the purpose of requiring the City to "treat union and non-union
14 Contractors equally and not give special advantages to either." San Diego Administrative Code §
15 22.4401. Because the requirement can be satisfied only by union contractors, or other contractors
16 willing to enter into Project Labor Agreements with the JLMAPs, the requirement is contrary to
17 the mandates of the Ordinance.

18 16. Further, the JLMAP on its face precludes non-union apprentices from working on
19 the Pure Water Facility Contract, constituting discrimination against non-union apprentices that is
20 proscribed by the Ordinance which states "All City Construction Project job opportunities should
21 be open equally to both union and non-union workers." Non-union apprentices would have to
22 resign from their non-union apprenticeship programs and potentially their current employment to
23 join the JLMAP apprenticeship programs. Thus, per the terms of the contract solicitation,
24 apprentices in non-JLMAP apprentice programs are being subject to discrimination proscribed by
25 the Ordinance.

26 17. The projected cost of the Phase 1 of the Pure Water San Diego Program is over \$1
27 billion, with about one-third of that amount expected to be funded by a federal government loan
28 administered by the State of California. The City contends that the Project cannot be feasibly

1 completed without those federal funds.

2 18. On May 23, 2019, Plaintiffs-Petitioners filed its original Complaint against the City
3 of San Diego in case number 37-2019-00026631-CU-WM-CTL (the “City Case”) and
4 immediately thereafter sought a preliminary injunction enjoining them from requiring that bidding
5 contractors for the North City Pure Water Facility project use apprentices registered in a JLMAP.

6 19. On June 21, 2019, Judge John S. Meyer heard argument in the City Case on
7 Plaintiffs-Petitioners’ preliminary injunction motion and subsequently granted the motion in his
8 June 24, 2019 Minute Order, which stated that the JLMAP requirement was “contrary to the intent
9 of SDMC §22.4402,” that the City of San Diego was unlikely to prevail on the merits, and
10 enjoined it from “requiring that bidding contractors for the North City Pure Water Facility project
11 use apprentices registered in Joint Labor Management Apprentice Programs” or “closing or
12 completing the bidding process for the North City Pure Water Facility, or awarding a contract for
13 the North City Pure Water Facility, based on a requirement that bidders use apprentices registered
14 in Joint Labor Management Apprentice Programs.”

15 **ON OCTOBER 11, 2019, THE STATE OF CALIFORNIA CHAPTERED LEGISLATION**
16 **LEGALIZING DISCRIMINATION AGAINST NON-UNION CONTRACTORS ON A**
17 **TEMPORARY BASIS IN THE CITY OF SAN DIEGO FOR NO OTHER PURPOSE**
18 **THAN TO CIRCUMVENT JUDGE MEYER’S JUNE 24, 2019 MINUTE ORDER**

19 20. Despite the June 24, 2019 Minute Order in the City Case, representatives of the
20 City, upon information and belief, and contrary to their obligations in the Ordinance that it be
21 “applied by the Mayor and City Council and interpreted judicially *so as to most fully implement*
22 *the Statement of the People’s Intent*,” *id.* at § 22.4405 (emphasis supplied), conspired with
23 members of the California Legislature to circumvent the Ordinance and pass legislation that
24 requires only the City—and no other municipalities in the entire State of California—to require
25 that any contractor bidding for work performed on any portion of the Pure Water San Diego
26 Program has to use a Project Labor Agreement.

27
28

1 21. On October 11, 2019, Governor Gavin Newsom signed Assembly Bill 1290 (“AB
2 1290”), which states that it is a “special statute” pursuant to Section 16 of Article IV of the
3 California Constitution.

4 22. AB 1290 states the following:

- 5 a. Section 1(a): As a condition of receiving construction financing under this
6 article for work performed at the City of San Diego’s North City Water
7 Reclamation Plant, North City Pure Water Facility, or any other portion of
8 the Pure Water San Diego Program, an applicant shall ensure that any
9 construction contract awarded on or after January 1, 2020, for any phase of
10 the Pure Water San Diego Program, including, but not limited to, expanding
11 or modifying wastewater conveyance, detention, or treatment processes at
12 the North City Water Reclamation Plant, work on the North City Pure
13 Water Facility or the adjacent Pure Water Pump Station, or work on any
14 other portion of the Pure Water San Diego Program, requires the contractor
15 to enter into a project labor agreement that meets the requirements of
16 Section 2500 of the Public Contract Code.
- 17 b. Section 1(b): The condition on receiving construction financing imposed
18 pursuant to this section shall remain in effect only until completion of all
19 phases of the Pure Water San Diego Program.
- 20 c. Section 2(a): As a condition of receiving financial assistance under this
21 chapter for work performed at the City of San Diego’s North City Water
22 Reclamation Plant, North City Pure Water Facility, or any other portion of
23 the Pure Water San Diego Program, an applicant shall ensure that any
24 construction contract awarded on or after January 1, 2020, for any phase of
25 the Pure Water San Diego Program, including, but not limited to, expanding
26 or modifying wastewater conveyance, detention, or treatment processes at
27 the North City Water Reclamation Plant, work on the North City Pure
28 Water Facility or the adjacent Pure Water Pump Station, or work on any

1 other portion of the Pure Water San Diego Program, requires the contractor
2 to enter into a project labor agreement that meets the requirements of
3 Section 2500 of the Public Contract Code.

4 d. Section 2(b): The condition on receiving financial assistance imposed
5 pursuant to this section shall remain in effect only until completion of all
6 phases of the Pure Water San Diego Program.

7 e. Section 3: The Legislature finds and declares that a special statute is
8 necessary and that a general statute cannot be made applicable within the
9 meaning of Section 16 of Article IV of the California Constitution because
10 of the unique conditions in the City of San Diego that make it necessary to
11 expeditiously develop and construct the Pure Water San Diego Program
12 water facilities described in this measure.

13 23. AB 1290 is a self-proclaimed temporary statute that “shall remain in effect only
14 until completion of all phases of the Pure Water San Diego Program.”

15 24. AB 1290 is designed to circumvent the Ordinance, nullify Judge Meyer’s June 24,
16 2019 Minute Order in the City Case, and resolve that legal dispute in favor of the City of San
17 Diego.

18 25. AB 1290’s conditions as to the state financial resources being sought by the City
19 for Pure Water San Diego Program amount to undue and discriminatory financial coercion on the
20 City and its taxpayers.

21 26. AB 1290 states that it was passed as a “special statute,” purportedly “because of the
22 unique conditions in the City of San Diego that make it necessary to expeditiously develop and
23 construct the Pure Water San Diego Program water facilities described in this measure.” AB
24 1290, Section 3.

25 27. That purported basis contradicts statements found in the legislative history by the
26 bill’s author, Assemblyman Todd Gloria, who stated that the bill was promoted to protect against
27 “climate change and seemingly endless droughts.”

28

1 28. In the legislative history, Assemblyman Gloria described the City Case as
2 “frivolous litigation claiming that the project violates Proposition A [*i.e.*, the Ordinance]” and
3 claimed that “AB 1290 would remedy the legal dispute of the Pure Water program.”

4 29. In fact, the proffered reason for AB 1290 is a pretextual justification for
5 discrimination against non-union contractors bidding on the North City Pure Water Facility
6 project and on any other portion of the Pure Water San Diego Program, as well as their respective
7 employees.

8 30. The AB 1290 conditions also go far beyond what the City endeavored to require,
9 but for Judge Meyer’s injunction in the City Case, *i.e.*, instead of requiring apprentices to only be
10 sourced from union sponsored apprentice programs, it effectively requires all employees of any
11 contractor to be subject to a collective bargaining agreement vis-à-vis a project labor agreement,
12 or otherwise.

13 31. The requirement that any contractor bidding on contracts related to the Pure Water
14 San Diego Program enter into a project labor agreement is unreasonable, arbitrary, and has no
15 rational basis that is in any way related to the successful completion of the Pure Water San Diego
16 Program water facilities described in the statute.

17 32. Project labor agreements are not needed for the Pure Water San Diego Program to
18 be completed or even proceed, and AB 1290 unduly interferes with the City’s obligation to
19 implement the Statement of the People’s Intent as contained in the Ordinance to the fullest extent
20 possible, as required by the Ordinance.

21 33. Under the Ordinance, contractors may elect to enter into project labor agreements,
22 though the City cannot require them to do so except in very narrow circumstances.

23 34. Those circumstances do not exist with respect to the Pure Water San Diego
24 Program. The “state funds” at issue are not state monies, but rather are loans which include
25 federal funds funneled through state, targeted to the City’s project, and are without any condition
26 for the work to be performed under any project labor agreements.

27 35. The California legislature could have made the provisions of AB 1290 applicable
28 as a general statute, but there is no evidence in the legislative history of the bill that a general

1 statute mirroring the intent of AB 1290 was ever considered. In fact, California does not condition
2 the use of project labor agreements on other local units of government in their construction
3 projects using funds provided by or through the state.

4 36. AB 1290 also unduly interferes with the City’s autonomy as provided in Article XI,
5 Section 5(a) of the California Constitution.

6 37. This action seeks a writ of mandamus, as well as declaratory and injunctive relief,
7 including (a) a declaration that AB 1290 violates Article I, Section 7(A), Article IV, Section 16
8 and Article XI, Section 5(a) of the California Constitution; and (b) injunctive relief enjoining the
9 State of California from imposing its arbitrary “special statute” solely upon the people of San
10 Diego and/or unlawfully requiring a Charter City to impose a project labor agreement requirement
11 as a condition to receive funding, in particular dedicated federal funding, which is an area that is
12 strictly a municipal affair.

13 38. Without a writ and other relief requested, the City – which is determined to move
14 forward with the Pure Water San Diego Program – cannot move forward in compliance with AB
15 1290 without violating controlling law.

16 **THE PARTIES**

17 39. AGC is, and at all times herein mentioned was, a California non-profit organization
18 that, is authorized to and, in fact, owns property where it maintains its office and conducts
19 business in the City of San Diego, and within the past year, has paid taxes to the City of San
20 Diego. AGC is a Chapter of the Associated General Contractors of America that represents
21 constructing and contracting professionals in California, including roughly 131 general
22 contractors, 117 specialty contractors, and numerous services providers and suppliers. Many of
23 the AGC’s members conduct business and own or lease property in the City of San Diego, and
24 they also have paid taxes to the City within the past year. AGC’s stated mission is to promote a
25 better industry for the professionals who build San Diego’s future. AGC is dedicated to
26 promotion opportunity, free enterprise, skill, integrity, and responsibility among San Diego’s
27 construction professionals by, among other things, advocating for its members’ needs and
28 promoting equal opportunity in employment. *See* AGC Mission & Vision Statement.

1 as though set forth in full herein by this reference.

2 48. AB 1290, on its face, violates Article I, section 7 of the California Constitution, by
3 failing to provide Plaintiffs-Petitioners, and their respective members and workers, with
4 opportunities equal to those who are subject to union contracts.

5 49. The State has no basis to favor union over non-union contractors with respect to the
6 construction of any part of the Pure Water San Diego Program.

7 50. The State of California has no rational basis to impose AB 1290 and require all
8 contractors bidding on the Pure Water Facility Contract to enter into a Project Labor Agreement.

9 WHEREFORE, Plaintiffs-Petitioners seek relief and judgment as set forth herein.

10 **SECOND CAUSE OF ACTION**

11 **(Violation of Article IV, Section 16 of the California Constitution)**

12 51. Plaintiffs-Petitioners hereby incorporate the allegations of the foregoing paragraphs
13 as though set forth in full herein by this reference.

14 52. Article IV, Section 16 of the California Constitution mandates that
15 (a) All laws of a general nature have uniform operation,” and declares that “(b) A local or special
16 statute is invalid in any case if a general statute can be made applicable.”

17 53. The California legislature could have made the provisions of AB 1290 applicable
18 as a general statute, but there is no evidence in the legislative history of the bill that a general
19 statute mirroring the intent of AB 1290 was ever considered.

20 54. The Pure Water San Diego Program is one of numerous public works projects in
21 the State of California that has the purpose of reducing San Diego’s reliance upon imported water,
22 preventing climate change, and eradicating droughts. If requiring that every contractor bidding on
23 any one of these public works projects had to enter into a project labor agreement was related in
24 any way whatsoever to the successful completion of the respective projects, the California
25 legislature could have made the provisions of AB 1290 applicable as a general statute.

26 55. However, AB 1290 applies only on a temporary basis to the contractors bidding on
27 a single set of construction projects in the City of San Diego.

28 56. AB 1290 states on its face that it is special legislation and not general legislation.

1 57. AB 1290 does not relate to a matter of state concern.

2 58. The Pure Water San Diego Program is a municipal affair matter of a Charter City to
3 which special legislation cannot apply.

4 59. The purported non-discriminatory reasons in the legislative history of AB 1290 are
5 pretextual. In fact, AB 1290 is designed to discriminate against non-union contractors bidding on
6 the North City Pure Water Facility project and on any other portion of the Pure Water San Diego
7 Program and to undermine the preliminary injunction order in the City Case.

8 60. The use of non-union versus union contractors or employees on the project has no
9 relation to the purported purpose of the legislation.

10 61. There is no state interest in having the Pure Water San Diego Program be
11 constructed by union contractors and not open-shop or other contractors who do not wish to enter
12 into any union agreements, particularly when the state does not impose such a requirement on
13 other units of local government.

14 62. There is no state interest in singling out the City in this special legislation and
15 imposing special requirements on the City.

16 63. The City cannot be bound by special legislation.

17 64. The comments in the legislative history by the bill’s author, Assemblyman Gloria,
18 reveal that the special statute was actually designed to defeat Plaintiffs-Petitioners’ claims in the
19 City Case, which he described on the record as a “frivolous litigation,” notwithstanding the
20 preliminary injunction order by court in the City Case.

21 65. AB 1290 is actually and palpably unreasonable and arbitrary because its true
22 purpose according to Assemblyman Gloria is to “remedy the legal dispute of the Pure Water
23 program,” though state intervention was not required to remedy that legal dispute.

24 66. AB 1290 is thus an invalid “special statute” under Article IV, Section 16 of the
25 California Constitution.

26 67. The State of California violates Plaintiffs-Petitioners’ right not to be subjected to
27 “special” statutes under Article IV, Section 16 of the California Constitution.

28 WHEREFORE, Plaintiffs-Petitioners seek relief and judgment as set forth herein.

1 **THIRD CAUSE OF ACTION**

2 **(Violation of Article XI, Section 5 of the California Constitution)**

3 68. Plaintiffs-Petitioners hereby incorporate the allegations of the foregoing paragraphs
4 as though set forth in full herein by this reference.

5 69. Article XI, Section 5(a) of the California Constitution authorizes charter cities to
6 “make and enforce all ordinances and regulations in respect to municipal affairs, subject only to
7 restrictions and limitations provided in their several charters and in respect to other matters they
8 shall be subject to *general laws*.” (Emphasis added.)

9 70. The City of San Diego is a Charter City.

10 71. The Fair and Open Competition in Construction Ordinance, San Diego
11 Administrative Code §§ 22.4401-22.4408, was enacted on July 10, 2012. The Ordinance states
12 that the City “shall not require a Contractor on a Construction Project to “execute or otherwise
13 become a party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or
14 performing a contract.” *Id.* § 22.4402.

15 72. In addition, the Ordinance incorporates as its premise that it is enacted to effectuate
16 the voters’ desire that “the City should treat union and non-union Contractors equally and not give
17 special advantages to either. All City Construction Project job opportunities should be open
18 equally to both union and non-union workers. Fair and open competition helps the City maximize
19 government efficiency by getting the best quality work for the best price for the taxpayers.” *Id.* §
20 22.4401 (Statement of the People’s Intent).

21 73. Pursuant to Article XI, Section 5(a) of the California Constitution, the State of
22 California is prohibited from encroaching on the City’s right to prohibit a contractor from
23 becoming a party to a Project Labor Agreement because the matter is one that is strictly a
24 municipal affair.

25 74. AB 1290 is unconstitutional because the law was not passed to address a statewide
26 concern and was not promulgated as a general law.

27 75. In fact, Assemblyman Gloria stated in the bill’s legislative history that the bill was
28 designed to address “climate change and seemingly endless droughts . . . water supply reliability

1 requiring all contractors bidding on the Pure Water Facility Contract to enter into a Project Labor
2 Agreement;

3 C. For issuance of an alternative writ of mandate or order to show cause, and after a
4 hearing, for issuance of a peremptory writ of mandate directing the State of California to rescind
5 and set aside the unlawful AB 1290;

6 D. For recovery of Plaintiffs-Petitioners' reasonable costs of suit and attorneys' fees
7 incurred herein pursuant to California Code of Civil Procedure § 1021.5 because the requested
8 relief will result in the enforcement of an important right affecting the public interest, or other
9 applicable law; and

10 E. For such other and further relief as the Court may deem just and proper.

11 DATED: October 22, 2019

DYKEMA GOSSETT LLP

12
13 By:



14 JAMES S. AZADIAN

15 Attorneys for Plaintiffs-Petitioners
16 Associated General Contractors of America, San
17 Diego Chapter, Inc. and Associated General
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