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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ASSOCIATED GENERAL CONTRACTORS
OF AMERICA, SAN DIEGO CHAPTER,

Case No. 09-01622

ORDER GRANTING MOTION TO
INTERVENE

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION; RANDALL
IWASAKI; and OLIVIA FONSECA,

Defendants,

and

COALITION FOR ECONOMIC EQUITY;
and NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE, SAN DIEGO CHAPTER,

Defendant-Intervenors
_____ /

This matter comes before the Court on a Motion to Intervene
by the Coalition for Economic Equity ("CEE") and the National
Association for the Advancement of Colored People, San Diego

1 Chapter ("NAACP") (collectively "Intervenors"). Intervenors seek
2 to intervene as defendants in a suit brought by the Associated
3 General Contractors of America, San Diego Chapter ("AGCA")
4 against the California Department of Transportation ("CA DOT"),
5 CA DOT Director Randall Iwasaki and Deputy Director Olivia
6 Fonseca. AGCA opposes the Motion to Intervene. CA DOT has not
7 addressed the motion. ¹

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11 FACTUAL AND PROCEDURAL BACKGROUND

12 CA DOT, as a recipient of federal funds, complies with the
13 federal requirements for maintaining a Disadvantaged Business
14 Enterprises ("DBE") program for administering contracts. This
15 program is administered pursuant to the federal requirements and
16 is based on data from a 2007 minority contractor disparity study
17 commissioned by CA DOT.
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19 On June 11, 2009, AGCA filed the present lawsuit, alleging
20 that the DBE program is unconstitutional pursuant to the
21 Fourteenth Amendment of the United States Constitution, 42
22 U.S.C. §§ 1981, 1983, and 2000d, and Article 1, Section 31 of
23 the California Constitution. AGCA seeks declaratory and
24 injunctive relief. CA DOT filed its answer on July 7, 2009, and
25 Intervenors filed the present Motion to Intervene on September
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28 ¹ This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 78-230(h).

1 14, 2009. No other motions have been filed in the case, and
2 trial is set for March 2011.

3 Intervenor's are two organizations whose memberships include
4 minority business owners who are among the intended
5 beneficiaries of the DBE program. Intervenor's advocate for
6 equality on behalf of their members, and have been active in
7 urging CA DOT to implement its current DBE program.
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11 I. OPINION

12 A. Legal Standard

13 Parties may intervene in a lawsuit as a matter of right or
14 by permission of the Court. The Ninth Circuit applies a four-
15 part test in evaluating a motion for intervention as of right
16 pursuant to Federal Rule of Civil Procedure 24(a): (1) the
17 application for intervention must be timely;(2) the applicant
18 must have a "significantly protectable" interest relating to the
19 property or transaction that is the subject of the action;(3)
20 the applicant must be so situated that the disposition of the
21 action may, as a practical matter, impair or impede the
22 applicant's ability to protect that interest; and(4) the
23 applicant's interest must not be adequately represented by the
24 existing parties in the lawsuit. Southwest Ctr. for Biological
25 Diversity v. Berg, 268 F.3d 810, 817 (9th Cir. 2001). Each of
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1 these requirements must be met before an intervention of right
2 can be allowed. NAACP v. New York, 413 U.S. 345, 369 (1973).

3 The test is applied "liberally in favor of potential
4 intervenors," and the Court's analysis "is 'guided primarily by
5 practical considerations,' not technical distinctions."

6 Southwest Ctr. for Biological Diversity, 268 F. 3d at 818. The
7 burden is on the party seeking intervention to demonstrate that
8 each of the elements are satisfied before the court will provide
9 the nonparty with a right to intervene. League of United Latin
10 American Citizens v. Wilson, 131 F. 3d 1297, 1302 (9th Cir.
11 1997).

12 A party has a sufficient interest for intervention purposes
13 if it will suffer a practical impairment of its interests as a
14 result of the pending litigation. California ex rel Lockyer v.
15 U.S., 450 F. 3d 435, 441 (9th Cir. 2006). In evaluating a motion
16 to intervene, the court must take all well-pleaded,
17 nonconclusory allegations in the motion to intervene, the
18 proposed complaint or answer in intervention, and declarations
19 supporting the motion as true, absent sham, frivolity or other
20 objections. Southwest Ctr. For Biological Diversity, 268 F. 3d
21 at 820.

22 Compared with intervention as of right, a district court
23 has broad discretion in deciding a motion for permissive
24 intervention pursuant to Federal Rule of Civil Procedure 24(b).
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1 San Jose Mercury News, Inc. v. U.S. Dis. Court, Northern Dis.
2 (San Jose), 187 F.3d 1096, 1100 (9th Cir. 1999). A party may be
3 allowed to intervene so long as: (1) "independent grounds for
4 jurisdiction [exist]; (2) the motion is timely; and (3) the
5 applicant's claim or defense, and the main action, have a
6 question of law or . . . fact in common." Id.

7 In determining whether a motion for intervention is timely,
8 courts consider the following three factors: "(1) the stage of
9 the proceedings; (2) whether the parties would be prejudiced;
10 and (3) the reason for and any delay in moving to intervene."
11 Northwest Forest Resource Council v. Glickman, 82 F. 3d 825, 836
12 (9th Cir. 1996).

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15 B. Intervention as of Right

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17 Intervenor's seek leave of the Court to intervene as
18 defendants in this case, arguing that they meet the requirements
19 for intervention as of right as well as permissive intervention.
20 No other motions have been filed in the case, and trial is set
21 for March 2011. Accordingly, Intervenor's motion is timely and
22 does not burden or delay the case. Intervenor's have a
23 protectable interest in the lawsuit, as they represent the
24 intended beneficiaries of the government program at issue. Their
25 interests will be directly impacted by the outcome of this
26 lawsuit. "By allowing parties with a practical interest in the
27 outcome of a particular case to intervene, we often prevent or
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1 simplify future litigation involving related issues. . ." United
2 States of America v. City of Los Angeles, California, 288 F. 3d
3 391, 398(9th Cir. 2002).

4
5 AGCA argues against intervention as a matter of right,
6 claiming that CA DOT will sufficiently represent Intervenors'
7 interests in the suit. Intervenors acknowledge that CA DOT can
8 be expected to defend its program, but argue that this does not
9 necessarily mean adequate representation for Intervenors'
10 specific interests.
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12 Intervenors need only meet the minimal burden of showing
13 that representation may be inadequate. Forest Conservation
14 Council v. U.S. Forest Service, 66 F. 3d 1489, 1498 (9th Cir.
15 1995). To determine adequacy of representation, courts consider
16 whether the interest of a present party is such that it will
17 undoubtedly make all the intervenor's arguments; whether the
18 present party is capable and willing to make such arguments; and
19 whether the intervenor would offer any necessary elements to the
20 proceedings that other parties would neglect. Id. at 1498-99
21 (internal citations omitted). While a presumption of adequate
22 representation arises when the representative is a governmental
23 body or officer charged by law with representing the interests
24 of the absentee, this presumption arises only when the
25 government is acting specifically on behalf of the constituency
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1 that it is representing. United States of America v. City of Los
2 Angeles, California, 288 F. 3d 391, 401-2 (9th Cir. 2002).

3 Here, as Intervenors point out, CA DOT's main interest is
4 ensuring safe public roads and highways. CA DOT is not charged
5 by law with advocating on behalf of minority business owners.
6 Intervenors, on the other hand, have a personal stake in the
7 program and in the outcome of this lawsuit, an interest that has
8 at times pitted them against CA DOT. Intervenors have shown that
9 representation may not be adequate for a variety of reasons,
10 thus meeting their burden.
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13 14 C. Permissive Intervention

15 AGCA also argues against permissive intervention, on the
16 grounds that Intervenors will cause delay and inefficiency.
17 However, these arguments are without merit. The motion to
18 intervene was timely filed, and there is no basis for AGCA's
19 allegation that Intervenors intend to use this case merely as a
20 platform for presenting policy arguments and unfairly disrupting
21 the Court's handling of AGCA's case.
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24 Given the liberal standards for intervention, at a minimum
25 Intervenors have met the standard for the Court to grant
26 permissive intervention. Independent grounds for jurisdiction
27 exist, the motion is timely, and Intervenors' motion as well as
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1 their proposed Answer, demonstrate the common questions of law
2 and fact presented by Intervenors' defenses to AGCA's claims.

3 The Court further finds that Intervenors meet the
4 requirements for intervention of right. Accordingly, the Court
5 finds that Intervenors are entitled to intervention as a matter
6 of right.
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10 III. ORDER

11 For the reasons set forth above, the Intervenors' Motion to
12 Intervene is hereby GRANTED.

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14 IT IS SO ORDERED.

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16 Dated: December 22, 2009.

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19 JOHN A. MENDEZ,
20 UNITED STATES DISTRICT JUDGE
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