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 Associated General Contractors  
 8 of America, San Diego Chapter, Inc.

9  
 10 UNITED STATES DISTRICT COURT  
 11 EASTERN DISTRICT OF CALIFORNIA

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13 ASSOCIATED GENERAL CONTRACTORS	)	No. 2:09-CV-01622-JAM-GGH
14 OF AMERICA, SAN DIEGO CHAPTER, INC.,	)	
14 a nonprofit California corporation,	)	
15 Plaintiff,	)	
16 v.	)	<b>STIPULATION</b>
17 CALIFORNIA DEPARTMENT OF	)	<b>CONSENTING TO</b>
17 TRANSPORTATION; et al.,	)	<b>PLAINTIFF'S FILING OF</b>
18 Defendants	)	<b>FIRST AMENDED COMPLAINT;</b>
19	)	<b>[PROPOSED] ORDER</b>
20 COALITION FOR ECONOMIC EQUITY; et al.,	)	
21 Defendant-Intervenors.	)	
	)	Judge: Hon. John A. Mendez

22 COMES NOW Plaintiff Associated General Contractors of America, San Diego Chapter,  
 23 Inc.; Defendants California Department of Transportation (Caltrans); Cindy McKim, in her official  
 24 capacity as Director of Caltrans; Olivia Fonseca, individually, and in her official capacity as  
 25 Deputy Director of Caltrans; and Defendant-Intervenors Coalition for Economic Equity; and  
 26 National Association for the Advancement of Colored People, San Diego Chapter (collectively the  
 27 Parties), and pursuant to Federal Rule of Civil Procedure 15(a)(2), stipulate to the filing of  
 28 Plaintiff's First Amended Complaint. In support of their stipulation, the Parties state as follows:

1 WHEREAS Plaintiff filed its Complaint in the above-captioned matter on June 11, 2009,  
2 against Defendants Caltrans; Will Kempton, individually, and in his official capacity as Director  
3 of Caltrans; and Olivia Fonseca, individually, and in her official capacity as Deputy Director of  
4 Caltrans;

5 WHEREAS in their Complaint, the Plaintiff set forth five claims for relief, by pleading  
6 violations of the Fourteenth Amendment to the United States Constitution, 42 U.S.C. § 1981,  
7 42 U.S.C. § 1983, 42 U.S.C. § 2000d, and Article I, section 31, of the California Constitution;

8 WHEREAS Defendants Caltrans, Will Kempton, and Olivia Fonseca filed a joint Answer  
9 to the Complaint on July 7, 2009;

10 WHEREAS Will Kempton resigned as Director of Caltrans on July 31, 2009, and was  
11 replaced by Randell H. Iwasaki;

12 WHEREAS pursuant to Federal Rule of Civil Procedure 25(d), Randell H. Iwasaki became  
13 a Defendant in this action by automatically substituting for Will Kempton in his official capacity  
14 as Director of Caltrans;

15 WHEREAS Plaintiff and Defendants Caltrans, Randell H. Iwasaki, Olivia Fonseca, and  
16 Will Kempton filed a Stipulation of Dismissal as to Will Kempton on December 16, 2009;

17 WHEREAS the Stipulation was approved by the Court on December 18, 2009;

18 WHEREAS on December 22, 2009, the Court granted the motion to intervene by  
19 Defendant-Intervenors Coalition for Economic Equity and National Association for the  
20 Advancement of Colored People, San Diego Chapter;

21 WHEREAS Defendant-Intervenors Coalition for Economic Equity and National  
22 Association for the Advancement of Colored People, San Diego Chapter filed their Answer on  
23 January 12, 2010;

24 WHEREAS Randell H. Iwasaki resigned as Director of Caltrans on April 15, 2010, and  
25 was replaced by Cindy McKim;

26 WHEREAS pursuant to Federal Rule of Civil Procedure 25(d), Cindy McKim became a  
27 Defendant in this action by automatically substituting for Randell H. Iwasaki in his official  
28 capacity as Director of Caltrans;

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1 WHEREAS the parties have agreed that Plaintiff's state law claim under Article I,  
2 section 31, of the California Constitution shall not be litigated in this action;

3 WHEREFORE, the Parties stipulate through their respective attorneys of record that:

- 4 1. Plaintiff may file its First Amended Complaint, a copy of which is attached hereto;  
5 and  
6 2. That the Defendants and Defendant-Intervenors waive notice and service of the  
7 Amended Complaint, and that they shall not be required to answer the amendment,  
8 and all denials, responses, and affirmative defenses contained in their Answers filed  
9 to the original Complaint shall be responsive to the Amended Complaint.

10 IT IS SO STIPULATED.

11 Respectfully submitted,

12 SHARON L. BROWNE  
13 RALPH W. KASARDA  
14 JOSHUA P. THOMPSON  
15 Pacific Legal Foundation

16 DATED: December 17, 2010.

17 By s/Ralph W. Kasarda  
18 RALPH W. KASARDA

19 Attorneys for Plaintiff

20 KATHRYN T. PAPALIA  
21 Legal Department  
22 California Department of Transportation

23 MARA E. ROSALES  
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26 G. SCOTT EMBLIDGE  
27 RACHEL J. SATER  
28 Moscone, Emblidge & Sater, LLP

DATED: December 17, 2010.

By s/G. Scott Emblidge  
G. SCOTT EMBLIDGE

Attorneys for Defendants

