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Coalition for Economic Equity and National Association  
for the Advancement of Colored People,  
San Diego Chapter

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
SACRAMENTO DIVISION

ASSOCIATED GENERAL CONTRACTORS  
OF AMERICA, SAN DIEGO CHAPTER, INC.,  
a nonprofit California corporation,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF  
TRANSPORTATION, et al.,

Defendants,

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

Defendant-Intervenors.

No. 2:09-cv-01622-JAM-GGH

**JOINT STIPULATION AND ORDER  
TO STRIKE EVIDENCE OF  
PLAINTIFF'S EXPERT JOHN  
SULLIVAN FROM PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT AND CONTINUE  
HEARING OF DEFENDANT-  
INTERVENORS' MOTION TO  
EXCLUDE THE TESTIMONY AND  
OPINIONS OF PLAINTIFF'S  
EXPERT JOHN SULLIVAN**

Judge: Hon. John A. Mendez

1 COMES NOW Plaintiff Associated General Contractors of America, San Diego  
2 Chapter, Inc.; Defendants California Department of Transportation, Cindy McKim (in her  
3 official capacity as Director of Caltrans), and Olivia Fonseca (individually, and in her official  
4 capacity as Deputy Director of Caltrans); and Defendant-Intervenors Coalition for Economic  
5 Equity and National Association for the Advancement of Colored People, San Diego Chapter  
6 (collectively the "Parties"). The Parties state as follows:

7 WHEREAS the Parties' cross-motions for summary judgment, filed on January  
8 25 and 26, 2011, are currently before this Court. Hearing on these motions has been set for  
9 March 23, 2011 at 9:30 a.m., in Courtroom 6.

10 WHEREAS Defendant-Intervenors' Motion to Exclude the Testimony and  
11 Opinions of Plaintiff's Expert John Sullivan ("Motion to Exclude") (Dkt. No. 47), filed on  
12 January 26, 2011, is currently before this Court. Hearing on this motion has been set for March  
13 23, 2011 at 9:30 a.m., in Courtroom 6.

14 WHEREAS Defendants joined in Defendant-Intervenors' Motion to Exclude  
15 (Dkt. No. 68) on February 7, 2011.

16 WHEREAS Defendant-Intervenors are willing to postpone hearing on their  
17 Motion to Exclude until after the cross-motions for summary judgment are decided, if Plaintiff  
18 withdraws any reliance on and reference to Mr. Sullivan, his opinions, and his expert report  
19 (including but not limited to Exhibit N to the Declaration of Ralph W. Kasarda in Support of  
20 Plaintiff's Motion) from Plaintiff's Motion for Summary Judgment or, In the Alternative,  
21 Summary Adjudication.

22 WHEREAS Plaintiff contends it did not intend for any citation to Mr. Sullivan's  
23 report in Plaintiff's Motion for Summary Judgment or, In the Alternative, Summary  
24 Adjudication or Statement of Undisputed Material Facts (Dkt. No. 44) to be construed as reliance  
25 on said report. Plaintiff contends that any citation to Mr. Sullivan's report in its Motion was part  
26 of the cumulative evidence used to support a fact.

27 WHEREAS the parties believe that postponing the hearing on Defendant-  
28 Intervenors' Motion to Exclude the Testimony and Opinions of Plaintiff's Expert John Sullivan

1 will further judicial economy.

2 NOW THEREFORE, the Parties stipulate by and through their counsel of record,  
3 and respectfully request that the Court approve, that:

4 1. Plaintiff withdraws any reliance on and reference to Mr. Sullivan, his opinions,  
5 and his expert report from Plaintiff's Motion for Summary Judgment or, In the Alternative,  
6 Summary Adjudication. Any such citations or reliance should be stricken and no longer be part  
7 of the case record.

8 2. Plaintiff withdraws Exhibit N of the Declaration of Ralph W. Kasarda in  
9 Support of Plaintiff's Motion for Summary Judgment or, In the Alternative, Summary  
10 Adjudication, which contained copies of excerpts from John Sullivan's Expert Report. Exhibit N  
11 shall be stricken and no longer be part of the case record.

12 3. Defendant-Intervenors continue the hearing on their Motion to Exclude the  
13 Testimony and Opinions of Plaintiff's Expert John Sullivan until the date and time this Court  
14 sets for hearing pre-trial motions in this matter.

15  
16 Jointly stipulated this 18th day of March 2011.

17  
18 DATED: March 18, 2011

19 By: /s/ Ralph W. Kasarda  
20 Ralph W. Kasarda

21 Attorneys for Plaintiff  
22 SHARON L. BROWNE (SBN 119246)  
23 RALPH W. KASARDA (SBN 205286)  
24 JOSHUA P. THOMPSON (SBN 250955)  
25 ADAM R. POMEROY (SBN 272517)  
26 Pacific Legal Foundation

27 DATED: March 18, 2011

28 By: /s/ Scott Emblidge  
G. Scott Emblidge

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DATED: March 18, 2011

By: /s/ Carlos P. Mino  
Carlos P. Mino

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JORY C. STEELE (SBN 206944)  
American Civil Liberties Union Foundation of  
Northern California

1 IT IS SO ORDERED, this 21<sup>st</sup> day of March, 2011.  
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4 /s/ John A. Mendez

5 John A. Mendez  
6 United States District Judge  
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