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6 Attorneys for Plaintiffs  
Air Conditioning Trade Association  
7 and ACTA Training Trust, Inc.

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

11 AIR CONDITIONING TRADE ASSOCIATION, )  
a non-profit public benefit corporation; )  
12 ACTA TRAINING TRUST, INC., )

13 Plaintiffs, )

14 v. )

15 CHRISTINE BAKER, in her official capacity as )  
Administrator of Apprenticeship for the California )  
16 Apprenticeship Council, Director of the California )  
Department of Industrial Relations; DIANE RAVNIK, )  
17 in her official capacity as Chief of the Division of )  
Apprenticeship Standards; DONNA BECHTHOLD, )  
18 JACK BUCKHORN, LES DENHERDER, JULIA )  
DOZIER, JOHN FOSTER, CARL GOFF, SCOTT )  
19 GORDON, RICHARD HARRIS, ARAM HODESS, )  
DINA KIMBLE, KATE LEYDEN, WAYNE )  
20 LINDHOLM, PAT MCGINN, JOSE MILLAN, )  
YVONNE DE LA PENA, ANNE QUICK, NEIL )  
21 STRUTHERS, VAN TON-QUINLIVAN, PAUL )  
RICHARD VON BERG, in their official capacities )  
22 as Commissioners of the California Apprenticeship )  
Council, )

23 Defendants. )  
24 \_\_\_\_\_ )

No. \_\_\_\_\_

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF  
—CIVIL RIGHTS**

[42 U.S.C. § 1983]

1 **INTRODUCTION**

2 1. This case challenges the constitutionality of a state law that deprives Plaintiffs and  
3 their students of their constitutional right to earn a living in a trade of their choice on equal terms  
4 with other tradespeople. That right is guaranteed by the Due Process, Equal Protection, and  
5 Privileges or Immunities Clauses of the Fourteenth Amendment.

6 2. Plaintiffs Air Conditioning Trade Association, ACTA Training Trust, Inc., and  
7 ACTA Wage & Hour, Inc., (hereafter collectively referred to as ACTA) operate an apprenticeship  
8 program to educate and train student apprentices<sup>1</sup> in sheet metal work and air conditioning  
9 installation and repair. ACTA is currently only allowed to recruit students from within a  
10 designated area of four counties (Mariposa, Merced, Stanislaus, and Tuolumne), pursuant to a set  
11 of Apprenticeship Standards that was approved by the California Department of Apprenticeship  
12 Standards (DAS) on March 30, 1990.

13 3. ACTA is ready, willing, and able to recruit students from all of California’s  
14 counties. But Defendants, acting under color of law—specifically California Labor Code  
15 section 3075 and its implementing regulations (Cal. Code Regs. tit. 8, §§ 212.2, 205, 218,  
16 230.1)—will not permit ACTA to expand its recruitment unless Defendants first determine that  
17 “apprentice training needs justify the establishment” of an expanded apprenticeship program. This  
18 “needs” test, and the objection and hearing procedure by which it is enforced, allows existing  
19 apprenticeship training providers essentially to “veto” their own competition, by blocking ACTA  
20 from expanding its apprenticeship program or opening a new apprenticeship program, solely to  
21 serve their own private economic interests. This “needs” test bears no rational relationship to a  
22 legitimate government interest, but solely protects established apprenticeship training businesses  
23 against legitimate economic competition from ACTA.

24 4. ACTA seeks to vindicate its right to operate its business without being subject to  
25 this arbitrary and discriminatory barrier established by state law. ACTA also seeks to vindicate the  
26 right of its students to work as apprentices on eligible state-approved projects, and to earn a living  
27 \_\_\_\_\_

28 <sup>1</sup> “Student” and “apprentice” are used herein interchangeably.

1 without being subject to an arbitrary and discriminatory protectionist barrier established by state  
2 law. Plaintiffs seek declaratory judgment that the challenged laws and policies are invalid,  
3 unenforceable, and void; a permanent injunction against any further enforcement of the challenged  
4 laws, regulations, and procedures or similar protectionist laws, regulations, and procedures by the  
5 Defendants; costs and reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

## 6 JURISDICTION AND VENUE

7 5. Plaintiffs allege, pursuant to 42 U.S.C. § 1983, the deprivation of rights secured by  
8 the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Plaintiffs also allege,  
9 pursuant to 42 U.S.C. § 1983, on behalf of its members and students, the deprivation of rights  
10 secured by the by the Due Process, Equal Protection, and Privileges or Immunities Clauses of the  
11 Fourteenth Amendment. Jurisdiction over their claims for declaratory and injunctive relief is  
12 vested in this Court by 28 U.S.C. §§ 1331, 2201, and 2202.

13 6. Venue is proper in this District under 28 U.S.C. § 1391(b) on the grounds that some  
14 or all of the conduct at issue took place in, and/or some or all of the Defendants reside in, the  
15 Eastern District of California.

## 16 PARTIES

### 17 A. Plaintiffs

18 7. Plaintiff Air Conditioning Trade Association is a 501(c)(6) corporation and a trade  
19 association, founded in 1972, headquartered in California, and engaged in public advocacy on  
20 behalf of its members and in the interest of the sheet metal and air conditioning trade. Air  
21 Conditioning Trade Association's members are contractors, including corporations, individuals  
22 who operate as sole proprietors, and others. Air Conditioning Trade Association has  
23 approximately 90 members, situated throughout the state of California. Air Conditioning Trade  
24 Association as brings this case both on its own behalf and on behalf of those contractor members  
25 who are harmed by the Defendants' actions as described herein.

26 8. Plaintiff ACTA Training Trust, Inc., is a nonprofit California corporation  
27 responsible for operating the apprenticeship program described herein. Through its apprenticeship  
28 program, ACTA Training Trust, Inc., teaches students from a wide variety of backgrounds who

1 seek training, education, and employment opportunities through the apprenticeship system. ACTA  
2 Training Trust, Inc., as an education provider, brings this case both on its own behalf and on behalf  
3 of those students who are harmed by the Defendants' actions as described herein.

4 **B. Defendants**

5 9. Defendant Christine Baker is the Administrator of Apprenticeship for the California  
6 Apprenticeship Council. Plaintiffs are informed and believe, and on that basis allege, that  
7 Ms. Baker, in her official capacity, is charged with the enforcement, maintenance, interpretation,  
8 and application of California Labor Code section 3075 and California Code of Regulations title 8,  
9 sections 200, *et seq.* Plaintiffs are informed and believe, and on that basis allege, that Ms. Baker's  
10 duties as Administrator of Apprenticeship include the enforcement of the "needs" test and the  
11 intervention and hearing procedure set forth in California Labor Code section 3075 and  
12 implementing regulations. In all of her actions and omissions alleged herein, Ms. Baker was acting  
13 under color of state law and is being sued in this action in her official capacity pursuant to *Ex parte*  
14 *Young*, 209 U.S. 123 (1908).

15 10. Defendant Diane Ravnik is the Chief of the California Division of Apprenticeship  
16 Standards (DAS). Plaintiffs are informed and believe, and on that basis allege, that Ms. Ravnik,  
17 in her official capacity, is charged with the enforcement, maintenance, interpretation and  
18 application of California Labor Code section 3075 and California Code of Regulations title 8,  
19 sections 200, *et seq.* Plaintiffs are informed and believe, and on that basis allege, that Ms. Ravnik's  
20 duties include the enforcement of the "needs" test and the intervention and hearing procedure set  
21 forth in California Labor Code section 3075 and implementing regulations. In all of her actions  
22 and omissions alleged herein, Ms. Ravnik was acting under color of state law and is being sued in  
23 this action in her official capacity pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

24 11. Donna Bechthold, Jack Buckhorn, Les DenHerder, Julia Dozier, John Foster, Carl  
25 Goff, Scott Gordon, Richard Harris, Aram Hodess, Dina Kimble, Kate Leyden, Wayne Lindholm,  
26 Pat McGinn, Jose Millan, Yvonne de la Pena, Anne Quick, Neil Struthers, Van Ton-Quinlivan, and  
27 Paul Richard Von Berg are Commissioners of the California Apprenticeship Council. Plaintiffs  
28 are informed and believe, and on that basis allege, that the California Apprenticeship Council is

1 a state agency ultimately responsible for the enforcement, maintenance, interpretation, and  
2 application of California Labor Code section 3075 and California Code of Regulations title 8,  
3 section 200, *et seq.*, and bears ultimate responsibility for the implementation and enforcement of  
4 the intervention and hearing procedure set forth therein. In all of their actions and omissions  
5 alleged herein, Defendants Bechthold, Buckhorn, DenHerder, Dozier, Foster, Goff, Gordon, Harris,  
6 Hodess, Kimble, Leyden, Lindholm, McGinn, Millan, de la Pena, Quick, Struthers, Ton-Quinlivan,  
7 and Von Berg, were acting under color of state law and are being sued in this action in their official  
8 capacities pursuant to *Ex parte Young*, 209 U.S. 123 (1908).

9 **GENERAL ALLEGATIONS**

10 **I**

11 **CALIFORNIA STATUTES AND**  
12 **RULES GOVERNING APPRENTICESHIP**

13 12. California statutes express a public policy favoring the use of apprentices on state  
14 public works projects. *See generally* Cal. Lab. Code § 3075.1. “Apprenticeship” refers to a work-  
15 based learning program whereby a student learns a craft or trade through both classroom and hands-  
16 on experience. *See id.*

17 13. California Labor Code section 1777.5(b) and California Code of Regulations title 8,  
18 section 230.1 require that contractors working on any state public works project must employ  
19 apprentices, and pay these apprentices the prevailing per diem apprentice wage rate, as determined  
20 by the California Department of Labor. However, California Labor Code section 1777.5(c)  
21 provides that only apprentices who are training under standards approved by the Chief of the DAS,  
22 and who are parties to an approved, written apprenticeship agreement, are eligible for employment  
23 on state public works at the approved wage rate. Further, California Code of Regulations title 8,  
24 section 230.1(c) provides that to be eligible to work as apprentice on state public works projects,  
25 an apprentice must be employed in accordance with Apprenticeship Standards approved by the  
26 DAS. Thus, when taken together, California Labor Code section 1777.5 and California Code of  
27 Regulations title 8, section 230.1, bar any person from employment as an apprentice on a state

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1 public work project unless that person is training under apprenticeship standards officially  
2 approved by the DAS.

3 14. Under California Labor Code section 3075(a), an apprenticeship program may be  
4 sponsored by an individual employer, or by an apprenticeship committee established unilaterally  
5 by a labor organization or by a management organization, or by a joint apprenticeship committee  
6 which is comprised of both employee and employer representatives. ACTA is a Unilateral  
7 Apprenticeship Committee (UAC) operated by a management organization.

8 15. Before an apprenticeship program may be approved by the DAS—thereby allowing  
9 students enrolled in that program to become eligible to work on state public works projects—the  
10 prospective sponsor of that apprenticeship program must first submit a set of Apprenticeship  
11 Standards to the DAS which specify, *inter alia*, the program sponsor’s “geographic area of  
12 operation” or “labor market area.” Cal. Code Regs. tit. 8, § 212.2(a). A “geographic area of  
13 operation” is defined as “the geographic area in which the program regularly operates and trains  
14 apprentices.” Cal. Code Regs. tit. 8, § 205(n).

15 16. Plaintiffs are informed and believe and on that basis allege that once the DAS  
16 approves a set of apprenticeship standards that specify a “geographic area of operation” or “labor  
17 market area,” the sponsor of the apprenticeship program described in those standards is limited to  
18 advertising and/or marketing its apprenticeship program to prospective students residing within that  
19 geographic area of operation.

20 17. An apprenticeship program will be allowed to expand into a new area only if the  
21 DAS determines that “the apprentice training needs [of the area] justify the establishment [of  
22 additional programs].” Cal. Lab. Code § 3075(a). In determining whether this “needs” test has been  
23 met, the DAS looks at three factors:

- 24 (1) if there is no existing apprenticeship program serving the same craft or trade and  
25 geographic area;
- 26 (2) if existing programs that do serve the same craft or trade and geographic area lack the  
27 capacity, or neglect or refuse, to dispatch sufficient apprentices to employers;

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1 (3) if existing apprenticeship programs that do serve the same craft or trade and geographic  
2 area have been deemed deficient by the California Apprenticeship Council.

3 Cal. Lab. Code § 3075(b). These provisions and the regulations implementing them therefore  
4 establish a test whereby approval of a new or expanded apprenticeship program requires an  
5 applicant to demonstrate to the satisfaction of the DAS the existence of a “need.”

6 18. Plaintiffs are informed and believe, and on that basis allege, that there exists no  
7 statute, regulation, or other official guidance defining how to measure the “capacity” of “existing  
8 programs” under California Labor Code section 3075(b)(2).

9 19. Instead, California regulations implement the “needs” test as follows. When a  
10 prospective sponsor of an apprenticeship program files its proposed standards with the DAS, the  
11 Chief of the DAS must serve a copy of the proposed standards on the sponsor of every existing  
12 apprenticeship program in the same “labor market area.” Cal. Code of Regs. tit 8, § 212.2(g). The  
13 sponsors of existing apprenticeship programs are then permitted to “submit comments” on the  
14 proposed apprenticeship program within 30 days. *Id.* When a “comment” is received, the Chief  
15 of the DAS may “hold a hearing on any issue relating to the compliance of a proposed program  
16 with federal and state law and regulations,” and must notify the sponsor of the existing program  
17 which has filed a “comment” of this hearing and give that sponsor an opportunity to attend the  
18 hearing. Cal. Code Regs. tit. 8, § 212.2(h). Such a hearing “shall be conducted informally without  
19 the application of formal rules of evidence or procedure.” *Id.*

20 20. Once the Chief of the DAS issues a decision either approving or rejecting an  
21 application to operate a new apprenticeship program or expand an existing program, the applicant  
22 and any existing program which submitted comments is entitled to appeal that decision within  
23 30 days. Cal. Code Regs. tit. 8, § 212.2(k). Such appeals are heard by a three-member panel of  
24 the California Apprenticeship Council (CAC), which submits a recommendation on the appeal to  
25 the full CAC for a final determination. Cal. Code Regs. tit. 8, § 212.2(l)-(m).

26 21. Plaintiffs are informed and believe, and on that basis allege, that this comment and  
27 hearing procedure allows existing apprenticeship programs to prevent competitors from operating  
28 new or expanded apprenticeship programs, and/or to impose significant costs on competitors in

1 order to protect their existing businesses from competition. This creates an artificial scarcity of  
2 apprenticeship services and allows existing apprenticeship training providers to keep prices and  
3 wages artificially high. Moreover, the “need” standard established in Section 3075 is arbitrary and  
4 irrational and bears no rational connection to the public health, safety, or welfare, or any other  
5 legitimate government interest. Instead, it exists for the sole purpose of economic protectionism.

6 **II**

7 **ACTA’S BUSINESS**

8 22. Since 1993, ACTA has operated an apprenticeship program through ACTA Training  
9 Trust, Inc. This apprenticeship program teaches the skills defined by the California Department  
10 of Labor as “Sheet Metal Contractor.” *See* Cal. Code Regs. tit. 16, § 832.43.

11 23. A person can become an apprentice with ACTA by entering into an apprenticeship  
12 agreement whereby a student is “indentured” to ACTA and, while participating in the educational  
13 program, is employed by one of ACTA’s contractor members or by an ACTA-authorized  
14 nonmember contractor, as an apprentice on appropriate work projects.

15 24. ACTA’s educational program is four years long, with each year consisting of two  
16 semesters of 17 weeks each (136 weeks total). Each week, students must participate in one on-line  
17 class, of approximately two hours long. The on-line classes are taught by a staff of three on-line  
18 instructors who are sheet metal journeymen. In addition, each student must participate in one  
19 hands-on, four- to six-hour long, in-lab training component approximately every month. The in-  
20 person lab classes are taught by lab instructors who are sheet metal journeymen. Thus students  
21 must participate in three to four on-line classes and one lab per month.

22 25. To be eligible for participation in its program, ACTA requires students to have a  
23 High School diploma or GED and to have a mailing address located in Mariposa, Merced,  
24 Stanislaus, or Tuolumne Counties. Most students are between 18 and 30.

25 26. ACTA has operated its combination on-line/hands-on apprenticeship program for  
26 approximately ten years. ACTA currently has 52 active students. Over the course of its operation,  
27 ACTA has placed thousands of apprentices in work positions. ACTA’s educational program was

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1 the first on-line apprenticeship program in the nation, and it has been reviewed and deemed to be  
2 in compliance with federal apprenticeship standards by the United States Department of Labor.

3 27. Students in ACTA's program are typically referred to the program by their  
4 employers. Because these students are already employed, ACTA is able to place them on jobs  
5 immediately after their apprenticeship applications are approved by DAS. If a student is not  
6 already employed, that student can still participate in ACTA's educational and training program  
7 by applying for approval from the DAS, and once granted approval, that student is placed on an  
8 "Out of Work List" which makes the student eligible for hiring by one of ACTA's contractor  
9 members or ACTA-approved nonmember contractors.

10 28. ACTA's existing Apprenticeship Standards, approved in 1993, define its labor  
11 market area as Mariposa, Merced, Stanislaus, and Tuolumne Counties. Plaintiffs are informed and  
12 believe that Defendants, acting under color of state law, forbid ACTA's apprenticeship program  
13 from recruiting, enrolling, or indenturing apprentices who reside outside Mariposa, Merced,  
14 Stanislaus, and Tuolumne Counties.

15 29. For example, in 2008, the DAS received a complaint from the Sheet Metal Workers  
16 International Association Local Union 162 & 105 that ACTA was recruiting apprentices who  
17 resided outside of Mariposa, Merced, Stanislaus, and Tuolumne Counties. On September 9, 2008,  
18 the DAS dismissed that complaint for lack of sufficient evidence, but found that ACTA is "limited  
19 by Article III of its Apprenticeship Standards to recruiting and enrolling apprentices in Mariposa,  
20 Merced, Stanislaus, and Tuolumne Counties." A true and correct copy of that dismissal is attached  
21 hereto as Exhibit A and incorporated herein by reference.

22 30. In June, 2007, ACTA sought approval from the DAS to amend its Apprenticeship  
23 Standards so as to expand its labor market area to encompass all 58 counties in California. As  
24 described below, in paragraphs 33-37, that approval was denied on January 28, 2010, pursuant to  
25 California Labor Code section 3075.

26 31. ACTA currently has four students who are not residents of Mariposa, Merced,  
27 Stanislaus, or Tuolumne Counties. Because Defendants, acting under color of state law, do not  
28 allow ACTA to indenture students who reside outside of these four counties, students who reside

1 outside these counties are not eligible to be employed at the apprentice wage rate on public work  
2 contracts because they are not training under apprenticeship standards that have been approved by  
3 the Chief of the DAS.

4 **III**

5 **ACTA MAY NOT EXPAND ITS OPERATION**  
6 **DUE TO THE ANTI-COMPETITIVE “NEEDS” TEST**

7 32. Paragraphs 33 through 37 below illustrate how Defendants have in the past applied  
8 the “need test” to deny ACTA permission to expand its area of operation beyond the four counties  
9 in which it is now authorized.

10 33. In 2007, ACTA applied for authority to expand its apprenticeship program to allow  
11 it to recruit, enroll, and indenture apprentices residing in all California Counties. In accordance  
12 with California Code of Regulations title 8, section 212.2, the Sheet Metal Workers’ Local Union  
13 104/Bay Area Industry Training Fund and the Sacramento Valley Sheet Metal Joint Apprenticeship  
14 Training Committee/Fresno Sheet Metal Joint Apprenticeship Committee (hereafter referred to as  
15 “the Unions”) objected to ACTA’s application and filed written comments with the DAS. These  
16 Unions operate existing apprenticeship training programs in market areas that would be affected  
17 by having to compete with ACTA if its expansion request were approved. The Unions asserted that  
18 no “public need” existed for a new or expanded sheet metal worker apprenticeship program. True  
19 and correct copies of these written objections are attached hereto as Exhibit B.

20 34. On March 29, 2008, Glen Forman, Acting Chief of the DAS, issued a decision  
21 approving ACTA’s application notwithstanding the Unions’ objections. A true and correct copy  
22 of Defendant’s written decision approving ACTA’s application is attached hereto as Exhibit C.

23 35. On July 9, 2008, the approval referred to in paragraph 34 was appealed by the  
24 Unions. A true and correct copy of that appeal attached hereto as Exhibit D.

25 36. The CAC appointed a three-member committee to hear the appeal. That committee  
26 requested that the parties submit further evidence and argument to the Acting Chief of the DAS  
27 regarding the existence of a “need” under California Labor Code section 3075. On October 20,  
28 2009, after receiving further evidence and argument, the Acting Chief of the DAS again

1 recommended approval of ACTA’s application for expansion. A true and correct copy of that  
2 recommendation is attached hereto as Exhibit E.

3 37. However, on January 28, 2010, the committee issued a final decision rejecting this  
4 renewed recommendation of approval, and reversing the Acting Chief’s determination that there  
5 was a “need” for the expansion of ACTA’s program. ACTA’s application was therefore denied.  
6 A true and correct copy of the committee’s final decision is attached hereto as Exhibit F.

7 **IV**

8 **INJURIES TO ACTA AND ITS MEMBERS AND STUDENTS**

9 **A. Injuries to ACTA**

10 38. ACTA is now authorized to operate its apprenticeship program only within  
11 Mariposa, Merced, Stanislaus, and Tuolumne Counties. ACTA is informed and believes and on  
12 that basis alleges that Defendants will not permit ACTA to recruit, enroll, or indenture students  
13 whose residential addresses are not within Mariposa, Merced, Stanislaus, and Tuolumne Counties.

14 39. Plaintiffs are informed and believe and on that basis allege that, should Defendants  
15 determine that ACTA has operated outside its labor market area, or otherwise exceeded its  
16 authority under either its Apprenticeship Standards or state law, Defendants are authorized by  
17 California Labor Code section 3084.5 and California Code of Regulations title 8, section 212.4(b)  
18 to impose penalties that include deregistration of ACTA’s existing apprenticeship program and  
19 enjoining any further operations.

20 40. Due to Defendants’ application and enforcement of the challenged laws and  
21 regulations, ACTA is now and will continue to be arbitrarily deprived of the right to form  
22 remunerative contracts, to advertise, or to recruit, enroll, and indenture students free from  
23 restrictions imposed by its economic competitors through the “need” requirement and the  
24 intervention and hearing procedure challenged herein.

25 41. The “needs” test set forth in California Labor Code section 3075, and its  
26 implementing regulations and administrative procedures, deprive ACTA of the liberty to enroll and  
27 indenture students residing outside of Mariposa, Merced, Stanislaus, and Tuolumne Counties,  
28 without a reasonable relationship to the protection of public health, safety, or welfare.

1 42. The “needs” test set forth in California Labor Code section 3075, and its  
2 implementing regulations and administrative procedures, deprive ACTA of the liberty to recruit  
3 students, and/or to advertise or market its apprenticeship program to students, residing outside of  
4 Mariposa, Merced, Stanislaus, and Tuolumne Counties, without a reasonable relationship to the  
5 protection of public health, safety, or welfare.

6 **B. Injuries to ACTA’s Students and Contractor Members**

7 43. ACTA has standing to assert the rights of its students and to advocate for the rights  
8 of its apprentices. *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 535-36 (1925); *Carey v. Population*  
9 *Servs.*, 431 U.S. 678, 682-84 (1977). ACTA is an organization that has standing to assert the rights  
10 of its contractor members. *Associated Gen. Contractors of Cal., Inc. v. Coal. for Econ. Equity*,  
11 950 F.2d 1401, 1406 (9th Cir. 1991).

12 44. Because apprentices may only be employed on state-approved projects if they are  
13 apprenticed under standards approved by the DAS, the limitation on ACTA’s area of operation  
14 means that students of ACTA who reside outside of Mariposa, Merced, Stanislaus, and Tuolumne  
15 Counties are rendered ineligible for employment as apprentices on state public works projects. If  
16 ACTA were not subject to the discriminatory and anti-competitive “need test,” students of ACTA  
17 who reside in other counties would be eligible to work as apprentices on state public works  
18 contracts and would be eligible for the state approved per diem apprentice prevailing wage rate.

19 45. Thus, by applying the “needs” test to deny ACTA the authority to expand its area  
20 of operation, Defendants are denying ACTA’s students of eligibility to participate on “state  
21 projects,” thus causing them economic injuries and depriving them of experience and training  
22 opportunities. Defendants are therefore acting under color of state law to deprive ACTA’s students  
23 of the right to earn a living and pursue their chosen occupation.

24 46. Some of ACTA’s contractor members work on state public works projects and in  
25 doing so are subject to California Labor Code section 1777.5 and California Code of Regulations  
26 title 8, section 230.1, as well as the other statutes and regulations described herein. Because  
27 contractors working on state public works projects are required to employ apprentices who are  
28 working under approved Apprenticeship Standards, and because ACTA’s approved Apprenticeship

1 Standards specify only Mariposa, Merced, Stanislaus, and Tuolumne Counties as its area of  
2 operation, contractors who belong to ACTA are legally barred from employing ACTA apprentices  
3 who reside outside of those four counties. For example, a contractor member working on a public  
4 works contract in Los Angeles County would not be permitted to use an ACTA apprentice residing  
5 in Los Angeles County, but must instead use an apprentice residing in Mariposa, Merced,  
6 Stanislaus, or Tuolomne Counties. This increases the operating costs, restricts the economic  
7 opportunities of, and imposes a significant burden on, ACTA’s contractor members. Defendants  
8 are therefore acting under color of state law unreasonably to deprive ACTA’s contractor members  
9 of economic opportunity and infringe on their right to make mutually beneficial contracts and to  
10 pursue their chosen occupation.

11 **DECLARATORY RELIEF ALLEGATIONS**

12 47. An actual and substantial controversy exists between Plaintiffs and Defendants as  
13 to their respective legal rights and duties. Plaintiffs contend, pursuant to 42 U.S.C. § 1983, that  
14 both on their face and as applied to Plaintiffs, the “needs” test established in California Labor Code  
15 section 3075 and the objection and hearing procedure by which it is enforced, violate the Due  
16 Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth Amendment.  
17 Plaintiffs are informed and believe, and on that basis allege, that Defendants contend otherwise on  
18 all counts.

19 48. Defendants are enforcing, and unless enjoined by this Court, will continue to enforce  
20 the “needs” test thereby violating the Plaintiffs’ constitutional rights. This is a present justiciable  
21 controversy, and a judicial determination of the constitutionality of the “needs” test and the  
22 objecting and hearing procedure by which it is enforced is necessary and appropriate. Declaratory  
23 relief is therefore proper.

24 **INJUNCTIVE RELIEF ALLEGATIONS**

25 49. Plaintiffs are informed and believe, and on that basis allege, that they are subject to  
26 future penalties if they make apprenticeship agreements with students residing in counties other  
27 than Mariposa, Merced, Stanislaus, and Tuolumne Counties without first obtaining approval by  
28 complying with the “needs” test.

1 50. Due to Defendants' enforcement of the challenged laws, Plaintiffs, their students,  
2 and contractor members, are now and will continue to be denied the right to make contracts and  
3 pursue their chosen occupation free from restrictions imposed by ACTA's economic competitors  
4 through the "needs" test and the comment and hearing procedure challenged herein.

5 51. If not enjoined by this Court, Defendants and their agents, representatives, and  
6 employees will continue to implement the "need test," thereby depriving Plaintiffs, their students  
7 and contractor members, of liberty without due process of law, denying equal protection of the  
8 laws, and abridging the privileges or immunities of citizenship to Plaintiffs' students and contractor  
9 members.

10 52. In particular, the "needs" test, and procedures described herein, arbitrarily,  
11 irrationally, and discriminatorily deprive Plaintiffs of the opportunity to pursue their chosen  
12 occupation as an apprenticeship training business throughout the State of California, and deprive  
13 Plaintiffs' individual members of the opportunity to pursue their chosen occupation in the  
14 contracting trades and to make contracts for indenture and labor throughout the State of California,  
15 and deprive Plaintiffs' students who do not reside in Mariposa, Merced, Stanislaus, or Tuolumne  
16 Counties of the opportunity to be employed at the apprentice wage rate on state public works  
17 projects. Thus the "needs" test and its enforcement procedures are now causing and will continue  
18 to cause Plaintiffs, their members, and their students to suffer irreparable injury, including, but not  
19 limited to, loss of business opportunities and the deprivation of their livelihoods. Plaintiffs, their  
20 members, and students, have no plain, speedy, and adequate remedy at law for such an injury.

21 53. If not enjoined by this Court, Defendants and their agents, representatives, and  
22 employees will continue to implement the "needs" test set forth in California Labor Code  
23 section 3075, and the intervention and hearing procedure set forth in California Code of  
24 Regulations title 8, section 212.2, which practices deprive ACTA, its contractor members, and its  
25 students of liberty without a rational connection to a legitimate government interest, in violation  
26 of the Due Process, Equal Protection, and Privileges or Immunities Clauses of the Fourteenth  
27 Amendment. In particular, the "needs" test, and the intervention and hearing procedure whereby  
28 it is enforced, arbitrarily, irrationally, and discriminatorily deprive ACTA, its contractor members,

1 and its students of economic opportunity and the right to pursue a chosen occupation throughout  
2 the State of California.

3 54. The “needs” test and its enforcing regulations and procedures are now causing and  
4 will continue to cause ACTA, its contractor members, and its students to suffer irreparable injury,  
5 including but not limited to, loss of business opportunities and the deprivation of their livelihoods.  
6 ACTA and its members have no plain, speedy, and adequate remedy at law for such an injury.

7 55. Accordingly, injunctive relief is appropriate.

8 **FIRST CLAIM FOR RELIEF**  
9 **DEPRIVATION OF LIBERTY**  
10 **WITHOUT DUE PROCESS OF LAW**

11 **(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

12 **(On behalf of ACTA)**

13 56. The “needs” test established in California Labor Code section 3075 does not bear  
14 any relationship to protecting the public health, safety, or welfare.

15 57. The requirement in California Labor Code section 3075 and California Code of  
16 Regulations title 8, section 212.2 that any applicant for expanded authority to operate an  
17 apprenticeship program must be subject to objection by competing apprenticeship programs, and  
18 thereafter subject to a hearing where the applicant must prove that “apprentice training needs justify  
19 the establishment [or expansion]” of the apprenticeship program, creates an arbitrary, irrational,  
20 and fundamentally unfair procedure that infringes on the constitutional right of Plaintiffs and their  
21 members to pursue their chosen occupation providing training services in California.

22 58. Plaintiffs are deprived of the liberty to recruit, enroll, indenture, teach, or advertise  
23 or market their apprenticeship program to students who reside outside of Mariposa, Merced,  
24 Stanislaus, and Tuolumne Counties unless they submit to an expensive and burdensome review and  
25 approval procedure that inherently grants authority to existing apprenticeship programs to prevent  
26 potential competitors from entering the market.

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1 arbitrarily denies Plaintiffs' members the right to pursue their chosen occupation through the use  
2 of, and education of, apprentices, and to hire such employees and/or apprentices as it chooses.

3 64. The "needs" test established in California Labor Code section 3075 does not bear  
4 any relationship to protecting the public health, safety, or welfare.

5 65. In addition, California Labor Code section 3075 and California Code of Regulations  
6 title 8, section 212.2, create an inherent conflict of interest which allows existing apprenticeship  
7 training providers to restrict or substantially burden their own competition.

8 66. By enforcing the arbitrary, irrational, unequal, and fundamentally unfair procedure  
9 established in California Labor Code section 3075 and California Code of Regulations title 8,  
10 section 212.2, Defendants, acting under color of state law, are depriving and will continue to  
11 deprive Plaintiffs of their constitutional right to make mutually beneficial contracts without due  
12 process of law.

13 67. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe  
14 their actions comply with all applicable laws.

15 68. An actual controversy exists between the parties, in that Plaintiffs will continue to  
16 suffer an ongoing and irreparable harm unless the further enforcement of the procedures established  
17 by California Labor Code section 3075 and California Code of Regulations title 8, section 212.2  
18 are declared unlawful and enjoined by this Court.

19 **THIRD CLAIM FOR RELIEF BY PLAINTIFFS**  
20 **ABRIDGMENT OF PRIVILEGES OR IMMUNITIES**

21 **(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

22 **(On behalf of Plaintiffs' contractor members)**

23 69. Defendants' enforcement of the "need" requirement in California Labor Code  
24 section 3075 and its implementing rules and regulations prohibits Plaintiffs' members from hiring  
25 or obtaining the services of students who reside outside of Mariposa, Merced, Stanislaus, and  
26 Tuolumne counties.

27 70. Contractors are legally obligated to employ eligible apprentices on public works  
28 projects, and to pay them the prevailing wage rate. Cal. Lab. Code § 1777.5(b); Cal Code Regs.

1 tit. 8, § 230.1. But students residing outside of Mariposa, Merced, Stanislaus, and Tuolumne  
2 counties are not deemed to be operating under an approved apprenticeship agreement or in an  
3 approved apprenticeship program, and are therefore not eligible for participation on public works  
4 projects at the prevailing wage rate. Thus to comply with state law, ACTA's contractor members  
5 are required to forego the services of ACTA-enrolled apprentices. This is solely caused by the  
6 Defendants' application of the challenged "needs test." This restriction arbitrarily denies Plaintiffs'  
7 contractor members the right to make mutually beneficial contracts with, and to educate, train, and  
8 hire apprentices as they choose.

9 71. The "need test" established in California Labor Code Section 3075 does not bear  
10 any relationship to protecting the public health, safety, or welfare.

11 72. By enforcing an arbitrary and discriminatory "needs" test and a preferential  
12 objection and hearing procedure which blocks the expansion of ACTA's apprenticeship programs  
13 beyond a specified "labor market," Defendants, acting under color of state law, arbitrarily and  
14 unreasonably interfere with the constitutional rights of Plaintiffs' contractor members to make  
15 mutually beneficial employment and indenture contracts, and to earn a living in a lawful  
16 occupation, in violation of the Privileges or Immunities Clause of the Fourteenth Amendment of  
17 the United States Constitution.

18 73. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe  
19 their actions comply with all applicable laws.

20 74. An actual controversy exists between the parties, in that Plaintiffs' members are  
21 suffering an ongoing and irreparable harm as a consequence of Defendants' favoritism towards  
22 existing apprenticeship programs and their discriminatory treatment against Plaintiffs, and this  
23 harm will continue unless the "need test" in California Labor Code section 3075 and the  
24 implementation thereof is declared unlawful and enjoined by this Court.

**FOURTH CLAIM FOR RELIEF**

**DUE PROCESS OF LAW AND EQUAL PROTECTION:  
ARBITRARY AND IRRATIONAL DISCRIMINATION**

**(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

75. By granting existing apprenticeship programs exclusive authority to object to applications for the opening of new apprenticeship programs or the expansion of apprenticeship programs on the basis of a lack of “need,” Cal. Lab. Code § 3075 and Cal. Code Regs. tit. 8, § 212.2, create an irrational and arbitrary procedure which protects established businesses against competition.

76. By enforcing these unequal procedures, Defendants, acting under color of state law, are irrationally and arbitrarily discriminating against Plaintiffs and in favor of existing apprenticeship programs in violation of Plaintiffs’ right to equal protection of the laws.

77. Allowing established apprenticeship programs an exclusive and special opportunity to prevent competitors from entering the business of running an apprenticeship program bears no rational relationship to public health, safety, or welfare.

78. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe their actions comply with all applicable laws.

79. An actual controversy exists between the parties, in that Plaintiffs are suffering an ongoing and irreparable harm by Defendants’ discriminatory treatment, and the harm will continue unless the “needs” test in California Labor Code section 3075, and the objection and hearing procedure in California Code of Regulations title 8, section 212.2 are declared unlawful and enjoined by this Court.

**FIFTH CLAIM FOR RELIEF**

**EQUAL PROTECTION AND DUE PROCESS OF LAW:  
VAGUENESS AND UNBRIDLED  
DISCRETION OF PUBLIC OFFICIALS**

**(U.S. Const. amend. XIV & 42 U.S.C. § 1983)**

80. California Labor Code section 3075(b)(2) states that the existence of a “need” may be demonstrated when “[e]xisting apprenticeship programs approved under this chapter that serve

1 the same craft or trade and geographic area do not have the capacity . . . to dispatch sufficient  
2 apprentices to qualified employers.” Plaintiffs are informed and believe, and on that basis allege,  
3 that there is no formula, or statutory or regulatory criteria or general policy of any sort, to measure  
4 the “capacity” of existing apprenticeship programs.

5 81. On the contrary, California Code of Regulations title 8, section 212.2(h) provides  
6 that, when the operator of an existing apprenticeship program files an objection, the Chief of the  
7 DAS enjoys unlimited “discretion” to hold a hearing to determine whether the application complies  
8 with applicable law, and that if such a hearing is held, it shall be “informal[] without the  
9 application of formal rules of evidence and procedure.” Thus neither California Labor Code  
10 section 3075 nor its implementing regulations provide any boundaries to the Defendants’ discretion  
11 in determining whether “apprentice training needs justify the establishment” of a new, or expanded,  
12 apprenticeship program.

13 82. Plaintiffs are informed and believe, and on that basis allege, that in the absence of  
14 definitions or other legislative or regulatory guidance for assessing either “apprentice training  
15 needs” or “capacity,” California Labor Code section 3075(b)(2) and California Code of Regulations  
16 title 8, section 212.2 are unconstitutionally vague and incomprehensible, and vest Defendants with  
17 unlimited and unguided discretion to interpret what constitutes “apprentice training needs” when  
18 enforcing California Labor Code section 3075, and to grant or withhold permission to operate an  
19 apprenticeship program at will, in violation of the Equal Protection and Due Process Clauses of the  
20 Fourteenth Amendment.

21 83. By applying a vague and incomprehensible law and by exercising unlimited  
22 discretion over applications for the operating of new, or the expansion of existing, apprenticeship  
23 programs, Defendants, acting under color of state law, violate Plaintiffs’ rights to equal protection  
24 and due process of law as guaranteed by the Fourteenth Amendment to the United States  
25 Constitution.

26 84. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe  
27 their actions comply with all applicable laws.

28 ///



1 89. Plaintiffs are informed and believe, and on that basis allege, that Defendants believe  
2 their actions comply with all applicable laws.

3 90. An actual controversy exists between the parties, in that Plaintiffs' students who are  
4 not residents of Mariposa, Merced, Stanislaus, or Tuolumne Counties are suffering an ongoing and  
5 irreparable harm as a consequence of Defendants' favoritism towards existing apprenticeship  
6 programs and their discriminatory treatment against Plaintiff, and this harm will continue unless  
7 the "needs" test in California Labor Code section 3075 and the implementation thereof is declared  
8 unlawful and enjoined by this Court.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs respectfully request relief as follows:

11 1. To enter a declaratory judgment that the "need" standard established by California  
12 Labor Code section 3075, both facially and as interpreted and applied by Defendants, deprives  
13 Plaintiffs of liberty without due process of law in violation of the Due Process Clause of the  
14 Fourteenth Amendment to the United States Constitution;

15 2. To enter a declaratory judgment that the "need" standard established by California  
16 Labor Code section 3075, facially and as interpreted and applied by Defendants, deprives Plaintiffs'  
17 individual members who do not reside in Mariposa, Merced, Stanislaus, or Tuolumne Counties,  
18 of liberty without due process of law in violation of the Due Process Clause of the Fourteenth  
19 Amendment to the United States Constitution;

20 3. To enter a declaratory judgment that the "need" standard established by California  
21 Labor Code section 3075, facially and as interpreted and applied by Defendants, abridges the  
22 privileges or immunities of Plaintiffs' individual members who do not reside in Mariposa, Merced,  
23 Stanislaus or Tuolumne Counties, in violation of the Equal Protection Clause of the Fourteenth  
24 Amendment to the United States Constitution;

25 4. To enter a declaratory judgment that the "need" standard established by California  
26 Labor Code section 3075, facially and as interpreted and applied by Defendants, deprives Plaintiffs  
27 of the equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth  
28 Amendment to the United States Constitution;

1           5.       To enter a declaratory judgment that the “need” standard established by California  
2 Labor Code section 3075, facially and as interpreted and applied by Defendants, is overly vague  
3 and ambiguous in violation of the Due Process and Equal Protection Clauses of the Fourteenth  
4 Amendment to the United States Constitution;

5           6.       To enter a declaratory judgment that the “need” standard established by California  
6 Labor Code section 3075, facially and as interpreted and applied by Defendants, abridges Plaintiffs’  
7 students who do not reside in Mariposa, Merced, Stanislaus, or Tuolumne Counties of the  
8 Privileges or Immunities of Citizens of the United States, in violation of the Privileges or  
9 Immunities Clause of the Fourteenth Amendment to the United States Constitution;

10          7.       To enter a declaratory judgment that the “need” standard established by California  
11 Labor Code section 3075, facially and as interpreted and applied by Defendants, deprives Plaintiffs’  
12 students who reside outside of Mariposa, Merced, Stanislaus, or Tuolumne Counties of the equal  
13 protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment  
14 to the United States Constitution;

15          8.       To permanently enjoin Defendants, their agents, representatives, and employees  
16 from enforcing the “needs” test established by California Labor Code section 3075, or any similar  
17 policy, as well as any and all implementing rules and regulations and the policies and practices by  
18 which Defendants enforce this test, including, but not limited to: (a) the policies of prohibiting  
19 Plaintiffs from expanding their apprentice education program without being subject to the arbitrary  
20 and discriminatory objection and hearing requirement established in California Code of  
21 Regulations title 8, section 212.2; (b) the policies of prohibiting Plaintiffs from making  
22 employment and indenture contracts with students residing outside of Plaintiffs’ “labor market”  
23 area without first obtaining approval for expansion by demonstrating that “apprentice training  
24 needs justify” such expansion; and (c) seeking or imposing any injunction against Plaintiffs or  
25 Plaintiffs’ members, deregistering Plaintiffs, or otherwise subjecting Plaintiffs or their members  
26 to harassment or sanction;

27          9.       For costs of suit;

28          10.      For reasonable attorney’s fees, pursuant to 42 U.S.C. § 1988(b); and

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11. Any such further legal and equitable relief as the Court may deem just and proper.

DATED: January 18, 2012.

Respectfully submitted,

TIMOTHY SANDEFUR  
ADAM R. POMEROY

By                   /s/ Adam R. Pomeroy                    
ADAM R. POMEROY

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Air Conditioning Trade Association  
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