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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

INDEPENDENT TRAINING AND)
APPRENTICESHIP PROGRAM, a California)
corporation, BRANDIN MOYER, and)
HAROLD E. NUTTER, INC., a California)
Corporation,)

Plaintiffs,)

v.)

CALIFORNIA DEPARTMENT OF)
INDUSTRIAL RELATIONS, an agency of the)
State of California, by and through)
CHRISTINE BAKER, in her official capacity)
as Acting Director of the CALIFORNIA)
DEPARTMENT OF INDUSTRIAL)
RELATIONS, DIVISION OF)
APPRENTICESHIP STANDARDS, by and)
through GLEN FORMAN, in his official)
capacity as Acting Chief, DIVISION OF)
LABOR STANDARDS ENFORCEMENT, by)
and through JULIE SU, in her official capacity)
as Labor Commissioner,)

Defendants.)

Case No.: **2:11-CV-01047-GEB -DAD**
PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
INJUNCTION

Date: July 11, 2011
Time: 9:00 a.m.
Courtroom: 10
Judge: Hon. Garland E. Burrell, Jr.

Complaint Filed - April 18, 2011

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY GIVEN NOTICE THAT at 9:00 a.m. on July 11, 2011, or as soon thereafter as this matter may be heard, in the Courtroom 10 of the Honorable Garland E. Burrell, Jr. of the United States District Court for the Eastern District of California, Sacramento Division, located at 501 I Street, Sacramento California 95814, Plaintiffs' Independent Training and

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LAW CORPORATION

1 Apprenticeship Program (“I-TAP”), Brandin Moyer and Harold E. Nutter, Inc. will and hereby do
2 move for a preliminary injunction against Defendants.

3 This motion for preliminary injunction is made pursuant to Fed. R. Civ. P. 65-1, and on the
4 grounds specified in this motion, the memorandum of points in authorities in support thereof, the
5 declarations filed in support thereof, the Request for Judicial Notice filed in support thereof, the
6 Complaint, and such other and further evidence as may be presented to the Court at the time of the
7 hearing.

8 Pursuant to this notice, Plaintiff I-TAP hereby moves for a preliminary injunction to enjoin
9 the California Department of Industrial Relations; California Department of Industrial Relations,
10 Division of Apprenticeship Standards; and Division of Labor Standards Enforcement and their
11 agents, servants, employees, attorneys and those in active concert or participation with them, as
12 follows:

13 (a) From refusing to recognize and comply with the United State Department of Labor
14 Administrative Review Board’s “Final Decision and Order” of January 31, 2007 and the U.S.
15 Department of Labor’s March 2, 2007 public notice, pursuant to 29 C.F.R. 29.13(d), that “[T]he
16 CDIR and the CAC no longer have authority to register or oversee apprenticeship programs for
17 ‘Federal purposes’ ” (72 F.R. 9590).

18 (b) From enforcing California Code of Regulations Section 16001 with respect to
19 projects involving “any Federal financial or other assistance, benefit, privilege, contribution,
20 allowance, exemption, preference or right pertaining to apprenticeship;”

21 (c) From enforcing California Labor Code Section 1777.5 with respect to apprentices
22 from federally approved apprenticeship training programs working on public works projects with
23 a Federal purpose;

24 (d) From refusing to enforce 29 C.F.R. Part 29 with respect to what constitutes a
25 “Federal purpose;”

26 (e) From refusing to acknowledge that Plaintiff I-TAP is an approved apprenticeship
27 program for all public works projects with a “Federal purpose” in California;

28 (f) From refusing to allow contractors to pay Plaintiff I-TAP’s apprentices at

1 apprentice prevailing wage rates rather than journeyman prevailing wage rates on public works
2 projects in California with any Federal purpose;

3 (g) From refusing to allow Plaintiff I-TAP to receive fringe training contributions as an
4 approved program on such projects;

5 (h) Directing Defendants to recognize Brandin Moyer and all other similarly situated
6 electrical tradesmen enrolled in federally certified apprenticeship programs as “apprentices”
7 entitled to all of the “assistance, benefits, privileges, contributions, allowances, exemptions,
8 preferences and/or rights pertaining to apprenticeship” (29 C.F.R. § 29.2) on public works project
9 in California that are accorded to “apprentices” in apprenticeship programs certified by DAS
10 pursuant to the provisions of the California Labor Code;

11 (i) Directing Defendants to rescind the Civil Wage and Penalty Assessment issued in
12 Case No. 40-26553/254 as against Plaintiff Harold E. Nutter, Inc.; and

13 (j) Directing Defendants to refrain from purporting to enforce any penalties,
14 assessments or sanctions against Plaintiff Harold E. Nutter, Inc. or any other contractor on the
15 grounds that apprentices participating in I-TAP’s apprenticeship training program, or any other
16 federally certified program, do not qualify for payment of apprentice prevailing wage rates
17 pursuant to California Labor Code §1777.5.

18 This motion is made on the grounds that, as demonstrated by the memorandum of points
19 and authorities below, ITAP has a reasonable probability of prevailing on the merits of its claims
20 against Defendants and ITAP will be irreparably harmed unless a preliminary injunction is issued
21 in this matter.

22 Respectfully submitted.

23 Dated: May 19, 2011

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a law corporation

24 /

25 By: /s/ Zachary Smith
26 Zachary Smith

27 Attorney for Plaintiffs