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No Fees per Gov. Code § 6103

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Alpine Union School District and
Alpine Taxpayers for Bond Accountability

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

ALPINE UNION SCHOOL DISTRICT, a
California public school district, and ALPINE
TAXPAYERS FOR BOND
ACCOUNTABILITY, an unincorporated
association,

Plaintiffs,

v.

GROSSMONT UNION HIGH SCHOOL
DISTRICT, California public school district,
RALF SWENSON, Superintendent, and DOES 1-
10,

Defendants.

Case No. 37-2014-00034850-CU-MC-CTL

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION BY ALPINE UNION
SCHOOL DISTRICT**

Date: December 5, 2014
Time: 1:30 p.m.
Dept: C-66
Judge: Joel M. Pressman

Complaint Filed: October 14, 2014
Trial Date: None Set

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I. INTRODUCTION

Defendant Grossmont Union High School District (“Grossmont”) is unlawfully wasting school bond revenues approved by the voters for an Alpine high school, on other unauthorized projects. The State Board of Education (“SBE”) is poised to allocate a substantial portion of those school bond revenues (paid for directly by Alpine taxpayers) from Grossmont to the Plaintiff Alpine Union School District (“Alpine”). Therefore, Alpine seeks to enjoin Grossmont from spending bond funds on any **new or future** construction projects until the SBE makes its imminent determination on the allocation to Alpine. Importantly here, Alpine does **not** seek to interrupt or enjoin funding for any of Grossmont’s pending or contracted-for construction projects.

These issues arise from the pending State action that would “unify” Alpine as a K-12 district (“Unification Petition”) in order to build a high school to serve its community (the “Alpine High School”); a school Grossmont repeatedly promised to Alpine taxpayers for over a decade, but which it has refused to build. The San Diego County Office of Education (“SDCOE”) Board unanimously approved the Unification Petition on September 19, 2014, and transmitted it through the statutory process to the SBE for final approval. The only disputed issue before the SBE is the equitable division of school bond funds, assets and liabilities between Alpine and Grossmont. Unfortunately, Grossmont’s well-documented misuse of bond funds as condemned by a recent Grand Jury, coupled with its recent blustery resolution to ramp up spending bond revenues to thwart an equitable apportionment to Alpine, compel that Alpine will suffer irreparable, imminent harm absent an injunction.

II. STATEMENT OF FACTS

22 Alpine is a public elementary school district serving grades K-8 in an unincorporated,
23 mountain foothill community. (Decl. of B. Cochrane, ¶ 4.) Grossmont is a public high school
24 district serving grades 9-12 and encompasses communities throughout east San Diego County and
25 part of the City of San Diego. (Decl. of T. Stender, Exh. A.)

26 Alpine’s elementary school district is a feeder to Grossmont’s high school district. (Decl.
27 of B.Cochrane, ¶ 4.) But because there is no high school in Alpine, students must trek miles “down
28

1 the hill” to high schools in other communities. (*Ibid.*) The average commute for Alpine students
2 to attend high school is thirty (30) miles with a maximum commute of up to forty (40) miles.
3 (*Ibid.*) This lengthy commute on mountain roads is dangerous for Alpine’s inexperienced student
4 drivers, and Alpine residents have suffered multiple, deadly accidents while commuting to and
5 from high school. (Decl. of S.Casamassima, ¶ 3.)

6 **A. Grossmont and Alpine Collaborate to Pass Prop H, Which Proposes to Build**
7 **Alpine High School**

8 In December 2003, Grossmont proposed a \$274 million bond measure – Proposition
9 (“Prop”) H – to renovate and expand existing facilities and to construct a new high school to serve
10 Alpine. (Prop H Ballot language, pp.1 & 7, attached as Exh. A to Decl. of S.Casamassima.) The
11 voters who passed Prop H in March 2004 were promised that these funds would be used to
12 “**construct a new school**,” among other things. (*Ibid.*) All Prop H bond funds have been spent or
13 allocated to date. (August 31, 2013 Prop H Financial Status Summary, attached as Exh. C to Decl.
14 of S. Casamassima.) However, Grossmont has not built the Alpine High School. (Decl. of S.
15 Casamassima, ¶ 15.)

16 **B. Grossmont Mismanages Prop H Funds, Obtains Additional Prop U Bond**
17 **Revenue, and Purchases a Site to Build the Alpine High School**

18 By 2005, Grossmont had burned through most Prop H funds, triggering criticism from the
19 San Diego Taxpayers Association about lack of bond oversight and program management. (Prop
20 U Staff Report, p.1, attached as Exh. E to Decl. of S. Casamassima.) In 2008, Grossmont proposed
21 a new \$417 million ballot proposition – Prop U – which **specifically promised** the voters that
22 funds would be used for acquisition of property and construction of a new high school in the
23 Alpine/Blossom Valley area. (Prop U Ballot language, pp. 1 & 11, attached as Exh. B to Decl. of
24 S. Casamassima.) Prop U contained an enrollment “trigger”, which required enrollment to equal or
25 exceed 2007-2008 levels (23,245 students) before the high school could be funded. (*Id.* at p. 11.)
26 That “trigger” was met, and acted upon: Grossmont’s enrollment **exceeded** 2007-2008 levels in
27 the three following school years. (See Decl. of S. Casamassima, ¶ 14.) After the “trigger” was
28

1 met, Grossmont purchased a 93-acre site (known as “Lazy A”) for \$15.6 million for the Alpine
2 High School. (Feasibility Study, p.16, and August 31, 2014 Prop U Financial Status Summary
3 attached as Exhs. F & D to Decl. of S. Casamassima.)

4 As of August 31, 2014, \$220 million in Prop U bonds proceeds have been spent or
5 allocated. (August 31, 2014 Prop U Financial Status Summary, attached as Exh. D to Decl. of S.
6 Casamassima.) Yet Grossmont still has not built the Alpine High School.

7 **C. Grossmont Abandons the Alpine High School Promised to Voters**

8 Even though the site had already been purchased, Grossmont abandoned all plans to
9 construct the promised Alpine High School in the Spring of 2012. It withdrew building and
10 facilities plans and removed the new school from the 2012 project list. (Decl. of S. Casamassima,
11 ¶ 15.) The estimated cost of constructing the Alpine High School on the Lazy A site is \$70
12 million. (*Id.* at ¶ 24.)

13 **D. Grossmont Reallocates and Wastes Bond Funds on Unauthorized Projects**

14 Grossmont has illegally used Prop H and Prop U funds on numerous projects, including the
15 following examples, which were not specified in, or incidental to, those projects identified to the
16 voters as is explicitly required by law:

- 17 • Grossmont built a 34,194 square foot, \$19.7 million “performing arts center” instead of the
18 voter-authorized 16,000 square foot, \$11.2 million multi-purpose facility.
- 19 • Grossmont built a \$5.4 million “child development and daycare center” instead of the voter-
20 authorized \$2.4 million career tech facility.
- 21 • Grossmont approved a \$14.4 million “event center” instead of the voter-authorized \$5.2
22 million conversion of an old gymnasium into a multi-purpose facility.

(Decl. of Chris Loarie, ¶ 4.)

23 Grossmont has also received over one hundred million dollars in state matching funds¹,
24 some of which were specifically allocated for new construction, like the Alpine High School.
25 (August 31, 2013 Prop H and August 31, 2014 Prop U Financial Status Summaries, attached as
26 Exhs. C & D to Decl. of S. Casamassima.) Additionally, Grossmont received a special state

27 ¹ State matching funds are part of the statewide system of public school construction. (See Ed. Code, §§17070.10 et
28 seq.) In short, the state pays about half of new school site acquisition and construction costs, so long as the district
pays its “local matching” funds. (See Ed. Code, § 17072.12.)

1 “hardship” match of \$8 million, specifically for constructing Alpine High School. (August 31,
2 2014 Prop U Financial Status Summary, attached as Exh. D to Decl. of S. Casamassima.) Even
3 though Grossmont received state matching funds for the sole purpose of building Alpine High
4 School, Grossmont spent those funds on other, unauthorized projects. (See Decl. of S.
5 Casamassima, ¶ 15.)

6 Grossmont continues to justify bond funded projects with a “Master Facility Plan” different
7 from the project lists approved by the voters to support Props H and U. (Decl. of Chris Loarie, ¶
8 3.) Grossmont cavalierly dismisses its illegal, unauthorized expenditures as mere “deviations”
9 from those projects approved for Prop H and Prop U bond funding, despite that the law explicitly
10 prohibits such “deviations”. (Decl. of Chris Loarie, ¶ 5; see also *Taxpayers for Accountable School*
11 *Bond Spending v. San Diego Unified School District* “*Taxpayers v. SDUSD*” (2013) 215
12 Cal.App.4th 1013, 1024-31 [holding that new field lighting was not authorized in text of bond
13 proposition providing upgrades for football stadium, and was therefore improper use of school
14 bond revenues].)

15 **E. Recognizing that Grossmont Won’t Build the Alpine High School as Promised,**
16 **the Citizens Petitioned the County and State for “Unification” of Alpine**

17 After Grossmont cancelled all plans for the completion of the Alpine High School, and in
18 response to Grossmont’s misuse of bond funds on unauthorized projects, a community organization
19 called the Alpine High School Citizens Committee (“AHSCC”) began the arduous school district
20 unification process to ensure completion of the Alpine High School by the *Alpine* district, rather
21 than Grossmont. (Decl. of S. Casamassima, ¶ 16.) Only by “unifying” can Alpine build and
22 operate its own high school for its residents. (Decl. of Bruce Cochrane, ¶ 5.)

23 Over two years ago, AHSCC began collecting the necessary signatures in support of
24 Alpine’s Unification Petition. (Decl. of S. Casamassima, ¶ 16.) On April 25, 2014, AHSCC filed
25 the Unification Petition with SDCOE. (Unification Petition, attached as Exh. F to Decl. of S.
26 Casamassima.) The San Diego County Registrar of Voters certified that sufficient valid signatures
27 (more than 2,000) were obtained to proceed with unification. (Feasibility Study, p. 8, attached as
28

1 Exh. G to Decl. of S. Casamassima.) SDCOE then held two public hearings regarding the
2 Unification Petition. (Decl. of S. Casamassima, Exhs. H & I.)

3 On August 13, 2014, the SDCOE Board, acting in its capacity as the County Committee on
4 School District Reorganization, **unanimously** voted for approval of the Unification Petition.
5 (SDCOE August 13, 2014 Meeting Minutes Excerpt, attached as Exh. J to Decl. of S.
6 Casamassima.) SDCOE also recommended that the State award Alpine its fair share of
7 Grossmont’s total assets to be substantially paid from remaining Prop H and Prop U bond funds.
8 (SDCOE Plans and Recommendations, p. 2, attached as Exh. K to Decl. of S. Casamassima.) **That**
9 **is at the crux of this motion.** On September 19, 2014, SDCOE transmitted the Unification
10 Petition to the SBE for final approval, where it is currently pending. (SDCOE Transmittal,
11 attached as Exh. M to Decl. of S. Casamassima.)

12 **F. The Grand Jury Finds Grossmont Deceit Regarding the Promised Alpine High**
13 **School, and Grossmont Responds with Support for Alpine Unification**

14 Grossmont’s illegal bond spending and repeated broken promises to build the Alpine High
15 School prompted a San Diego County Grand Jury to investigate Grossmont’s misconduct and issue
16 a 2012 report entitled “Grossmont – Fool Us Once, Fool Us Twice” (“Grand Jury Report”). (Decl.
17 T. Stender, Exh. B) The Grand Jury Report summarizes the history of Grossmont’s bait-and-
18 switch tactics regarding bond measures and the promised Alpine High School, and recommends
19 that Grossmont either commit to unconditionally building the Alpine High School or “take all
20 reasonable steps to cooperate with the Alpine Union School District in support of the unification
21 effort in that community.” (*Id.* at p. 12.) In response, Grossmont offered a *mea culpa* and **agreed**
22 with the Grand Jury’s recommendation that Grossmont cooperate with Alpine’s unification.
23 (Grossmont Response to Grand Jury Report, p. 17, attached as Exh. C to Decl. of T. Stender.)

24 **G. Grossmont Moves Swiftly to Deplete All Bond Funding Before the SBE**
25 **Finalizes Alpine’s Unification and Apportions Bond Funds to Alpine**

26 The **only** disputed issue before the SBE – the final decision maker on Alpine’s Unification
27 Petition – is “how” the equitable division of bond funds, assets and liabilities between the districts
28

1 will occur. (See SDCOE Findings and Recommendations, attached as Exh. L to Decl. of S.
2 Casamassima.) There is no dispute that some equitable division of assets and liabilities will occur.
3 The SDCOE Board’s unanimous determination that Alpine be allocated an equitable and fair share
4 of Grossmont’s total assets weighs heavily in favor of the SBE adopting that recommendation in its
5 final decision. (See SDCOE Plans and Recommendations, attached as Exh. K to Decl. of S.
6 Casamassima.) Unfortunately, due to SBE processes and scheduling, it may be another year before
7 a final determination and order are issued. (See April 29, 2014 SDCOE Meeting Minutes, p. 42,
8 attached as Exh. H to Decl. of S. Casamassima.)

9 As of June 30, 2014, Grossmont’s school construction program had approximately \$104
10 million in assets, including over \$85 million in cash assets derived from Prop H, Prop U, and state
11 matching funds. (September 3, 2014 Quarterly Report, attached as Exh. A to Decl. of C. Loarie.)
12 Grossmont is spending these funds at the rate of \$2-11 million per month – or roughly \$90,000 to
13 \$500,000 per day. (Decl. C. Loarie, ¶ 8.) If this spending continues unabated, Grossmont will
14 have exhausted all bond and related state matching funds by 2017 and will have exhausted its
15 bonding capacity for the near future, including for the newly-unified Alpine district. (*Ibid.*)

16 On September 11, 2014, Grossmont’s Board passed Resolution No. 2015-02 entitled
17 “Resolution to Reaffirm Opposition for the Unification of the Alpine Union School District” (the
18 “Resolution”). (Resolution, attached as Exh. D to Decl. of T. Stender.) Recognizing that it will
19 certainly lose some or all of the limited bond funds that remain when the SBE issues its
20 determination, the Grossmont Board **reversed** its previous position sworn to the Grand Jury and
21 formally acted to deplete the remaining bond funds before the SBE determines the portion that **will**
22 be allocated to Alpine. (*Ibid.*) To compound its misrepresentations to the voters, taxpayers and
23 Grand Jury about the Alpine High School and unification, Grossmont’s Resolution also falsely
24 claims “38%” of Grossmont’s “operating budget” will be cut by the SBE’s pending apportionment
25 of bond funds. (*Ibid.*) By definition, school bond revenues can **never** be part of a district’s
26 operating budget.² (Const., art. XIII A, § 1, subd. (b)(3)(A): “...proceeds from the sale of the bonds

27 ² The ballot measure that authorizes the bond funds at issue (Proposition 39) was called the “Strict Accountability in
28 Local School Construction Bonds Act of 2000.” (Ed. Code §15264 et seq.)

1 [shall] be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any
2 other purpose, **including teacher and administrator salaries and other school operating**
3 **expenses**” (emphasis added.)

4 Grossmont’s Superintendent also issued a press release recently on November 4, 2014,
5 which falsely claimed that this litigation will prevent Grossmont from completing projects
6 currently under construction, despite the narrow scope of the injunction sought. (Superintendent’s
7 Newline, attached as Exh. F to Decl. of T. Stender.)

8 III. DISCUSSION AND ANALYSIS

9 A court may grant an injunction to require a party to refrain from a particular act and
10 preserve the *status quo* pending a trial on the merits. (Code Civ. Proc., § 525; *SB Liberty, LLC v.*
11 *Isla Verde Ass’n, Inc.* (2013) 217 Cal.App.4th 272, 280.) An injunction may be granted:

12 (1) When it appears by the complaint that the plaintiff is entitled to the relief
13 demanded, and the relief, or any part thereof, consists in restraining the commission
14 or continuance of the act complained of, either for a limited period or perpetually.

15 (2) When it appears by the complaint or affidavits that the commission or
16 continuance of some act during the litigation would produce waste, or great or
17 irreparable injury, to a party to the action....

18 (Code Civ. Proc., § 526, subd. (a).) Although not an express statutory prerequisite for injunctive
19 relief, a court also considers the relative harm to both parties. (See *Robbins v. Sup. Ct.* (1985) 38
20 Cal.3d 199, 205.)

21 A preliminary injunction against Grossmont is urgently needed to prevent irreparable injury
22 to Alpine. Absent an injunction limiting Grossmont’s future spending, Grossmont will continue to
23 waste and exhaust the limited remaining bond revenues on unauthorized projects before the SBE
24 allocates those funds to Alpine in due course. Once Grossmont depletes the bond revenues at
25 issue, insufficient funds will remain to satisfy the pending SBE determination and to build the
26 Alpine High School, rendering the district unification and the SBE’s determination thereon utterly
27 meaningless. In contrast, Grossmont stands to suffer no prejudice or harm as a result of this
28 injunction because none of its operating budget will be affected, and because Alpine does **not** seek
to enjoin any approved projects currently contracted for or under construction.

1 **A. Grossmont’s Violations of Prop 39; and Alpine’s “Unification” Pending Before**
2 **the State Board of Education**

3 To provide context for the legal issues underlying this action, this section provides a brief
4 description of the law governing school bond spending and school district unification.

5 **1. Public Schools are a Matter of Statewide Concern**

6 The California Supreme Court and Courts of Appeal have consistently explained that
7 school districts like Grossmont, although “separate political entities for some purposes,” “are the
8 State’s agents for local operation of the common school system.” (*Butt v. State of California*
9 (1992) 4 Cal.4th 668, 681; see *Hall v. City of Taft* (1956) 47 Cal.2d 177, 181; *California Teachers*
10 *Association v. Hayes* (1992) 5 Cal.App.4th 1513, 1524-1525.) “Local school districts remain
11 agencies of the state rather than independent, autonomous political bodies.” (*California Teachers*
12 *Association v. Hayes, supra*, 5 Cal.App.4th at 1533.) “The beneficial ownership of property of the
13 public schools is in the state.” (*Hall v. City of Taft, supra*, 47 Cal.2d at 181.) “The system of
14 public schools, although administered through local districts created by the Legislature, is ‘one
15 system ... applicable to all the common schools....’” (*Butt, supra*, 4 Cal.4th at 681 (supreme
16 court’s emphasis).)

17 **2. Grossmont Reaps the Benefits, but not the Burdens, of Prop 39**

18 “The usual method of funding new school construction in California has been for school
19 districts to obtain voter approval for the issuance of general obligation bonds.” (*San Lorenzo*
20 *Valley Comm. Adv. for Resp. Educ. v. San Lorenzo Valley USD* (2006) 139 Cal.App.4th 1356,
21 1395.) Prior to November 2000, the California Constitution³ required that taxes or special
22 assessments levied to pay any such bonded indebtedness had to be approved by two-thirds of the
23 voters. (*Foothill-De Anza Cmty. Coll. Dist. v. Emerich* (2007) 158 Cal.App.4th 11, 19.) With the
24 passage of Prop 39 in 2000, the Constitution was amended to reduce the required approval from
25 two-thirds to only 55% of voters when the indebtedness was to be incurred by a school district for
26 ///

27 _____
28 ³ All constitutional references are to the California Constitution.

1 the “construction, reconstruction, rehabilitation, or replacement of school facilities.” (*McLeod v.*
2 *Vista Unified School District* (2008) 158 Cal.App.4th 1156, 1160; see also Const., art. XIII A, § 1,
3 subd. (b)(3).)

4 In exchange for this lower threshold for voter approval, Prop 39 limits a school district’s
5 discretion in how these funds can be spent. Thus, whenever a school district elects to submit a
6 local measure to the voters under Prop 39, the school district must also meet the following
7 accountability requirements:

8 (A) A requirement that the proceeds from the sale of the bonds be used **only** for
9 the purposes specified . . . and not for any other purpose, including teacher and
10 administrator salaries and other school operating expenses.

11 (B) [publish on ballot] **A list of the specific school facilities projects** to be
12 funded. . . .

13 (Const., art. XIII A, § 1, subd. (b)(3) (emphasis added).)

14 The Education Code requires that “[v]igorous efforts are undertaken to ensure that
15 the expenditure of bond measures, including those authorized pursuant to . . . [Prop 39],
16 are in strict conformity with the law.” (Ed. Code, § 15264.) Consistent with the intent of
17 the Legislature, Prop 39’s accountability requirements are strictly construed. Courts hold
18 that a school district cannot spend bond funds obtained through Prop 39 on projects not
19 authorized in the text of the bond proposition. (*Taxpayers v. SDUSD, supra*, 215
20 Cal.App.4th at 1024-31.)

21 **3. The School District Unification Process: Alpine’s Only Recourse to**
22 **Build the Promised High School**

23 “Unification” is a time intensive, statutory process which allows an elementary school
24 district to expand or reorganize into a K-12, or “unified” school district. (See Ed. Code, § 35500 et
25 seq.) Unified school districts are the preferred form of school district organization, and the
26 Legislature has recommended taking “steps to bring all school districts into unified structures.”
(District Organization Handbook, chpt. 2, pp. 8 & 10, attached as Exh. E to Decl. of T. Stender.)

27 ///

1 The deliberate unification process and its requirements are set forth in Education Code section
2 35700 et seq., summarized below:

- 3 • File a petition signed by a minimum number of registered voters.⁴
- 4 • The petition must substantially meet all the following criteria:
 - 5 (1) Adequate number of pupils enrolled in each district.
 - 6 (2) A substantial community identity in each district.
 - 7 (3) An equitable division of property and facilities.
 - 8 (4) Preservation of integration.
 - 9 (5) Any increased costs to the State are insignificant/incidental.
 - 10 (6) Promote sound education performance.
 - 11 (7) Any increased costs in school facilities are insignificant/incidental.
 - 12 (8) The primary purpose of reorganizing is something other than to significantly increase property values.
 - 13 (9) Promote sound fiscal management.
- 14 • The county committee holds one or more noticed public hearings on the petition.
- 15 • The county committee issues a recommendation for approval or disapproval of the
- 16 petition, which it transmits to the State Board of Education/SBE.
- 17 • The SBE holds a hearing and issues a final decision approving or disapproving the
- 18 petition.

19 **The SDCOE Board unanimously found that Alpine's Unification Petition met all the**
20 **above requirements,** and is only awaiting its hearing and final determination by the SBE. The
21 only unresolved issue before the SBE is the equitable division of property, which includes the
22 division of bonded indebtedness. (Ed. Code, §§ 35576, 35738; see also SDCOE Plans and
23 Recommendations, attached as Exh. K to Decl. of S. Casamassima.) This issue is significant,
24 because school districts have a limited bonding capacity, or ability to raise capital through bond
25 revenues paid for by property owners within the district, based on their current bond indebtedness.
26 (See Feasibility Study, pp.17-19, attached as Exh. G to Decl. of S. Casamassima.) Accordingly,
27 when Grossmont's bonded indebtedness from Props H and U is divided in the SBE's final
28 determination, Alpine's working capital will be fixed and its future bonding capacity restricted to
as little as \$12 million. (*Id.* at 18.)

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⁴ At least 25% of registered voters or a number equivalent to 8% of the votes cast for all candidates for Governor in the last election. Alternatively a majority of the members of the governing boards of each affected district may sign. (Ed. Code, § 35700.)

1 **B. Expenditure of Bond Funds on Future, or Unauthorized or Non-Priority**
2 **Projects, Will Produce Waste and Cause Alpine Irreparable Injury**

3 A preliminary injunction may issue where “the commission or continuance of some act
4 during the litigation would produce waste, or great or irreparable injury, to a party to the action.”
5 (Code Civ. Proc., § 526, subd. (a)(2).) The harm to the requesting party is irreparable when it is
6 significant and cannot later be repaired. (See *People ex rel. Gow v. Mitchell Brothers’ Santa Ana*
7 *Theater* (1981) 118 Cal.App.3d 863, 870-71.) The harm must also be imminent, as established by
8 the realistic prospect that the party enjoined intends to engage in prohibited activity. (*Korean*
9 *Philadelphia Presbyterian Church v. California Presbytery* (2000) 77 Cal.App.4th 1069, 1084.)

10 **1. Alpine’s Harm Is Imminent**

11 Alpine’s harm is imminent as evidenced by Grossmont’s formal Board Resolution from
12 September 11, 2014. Grossmont contemptuously denounces Alpine’s Unification Petition and
13 Alpine’s right to an equitable portion of bond funds as unanimously recommended by SDCOE.
14 Grossmont also affirms its resolve to continue depleting bond funds in advance of the SBE’s
15 determination on bond fund allocation to Alpine—**thumbing its nose at the authority of both the**
16 **State and County**. Notably, Grossmont does **not** take the position that the bond funds should not
17 be allocated to Alpine. Rather, Grossmont’s scheme is to wastefully deplete the coffers before
18 funds can be transferred to Alpine pursuant to the final order from the SBE. Grossmont’s express
19 action in the Resolution, combined with its historic misuse of bond funds on unauthorized projects,
20 and its continued reliance on its unauthorized Facility Master Plan, provides every reason to
21 believe Grossmont will make good on its threat to deplete the remaining funds to prevent the
22 equitable apportionment with Alpine as ordered by the SBE.

23 **2. Alpine’s Harm Will Be Irreparable**

24 The harm suffered by Alpine will be irreparable, because once Grossmont wastes the
25 limited remaining bond funds, they cannot be recovered or replaced. There currently exists
26 sufficient bond revenue to finance construction of Alpine High School. At its last report,
27 Grossmont had \$104 million in bond and state matching fund revenue, whereas the Alpine High
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1 School is projected to cost an estimated \$70 million to construct (the land is already purchased).
2 However, Grossmont is burning through bond revenue at an alarming rate. If Grossmont's
3 spending is not enjoined, insufficient bond funds will remain when the SBE orders their transfer
4 from Grossmont to Alpine. The lack of available funds will render construction of the Alpine High
5 School impossible, and render the SBE's allocation decision unenforceable. It will be virtually
6 impossible for Alpine to otherwise fund construction of the high school, given that Grossmont will
7 have fully "maxed-out" the taxpayer's bonding capacity for residents in Alpine.

8 **3. Grossmont's Spending on Any New Project(s) Will Be Wasteful**

9 Grossmont's continued spending of bond funds will produce waste by depleting funds
10 which are expected by everyone to be equitably divided with Alpine. If all bond funds are
11 depleted, it may indefinitely delay or render moot any decision on asset allocation by the SBE,
12 because there will be insufficient funds remaining from bond revenue to satisfy the SBE ruling.
13 Alpine's Unification Petition, unanimously supported by the SDCOE Board, would be rendered
14 meaningless, and Grossmont will have usurped SBE's statutory authority. The 93 acre "Lazy A"
15 site, acquired for \$15.6 million for the purpose of building the high school, will sit vacant.

16 **C. Equitable Relief is Necessary: Alpine Is Entitled to Restrain Grossmont's**
17 **Future Bond Expenditures**

18 A preliminary injunction is appropriate when "the plaintiff is entitled to the relief
19 demanded, and the relief, or any part thereof, consists in restraining the commission or continuance
20 of the act complained of. . . ." (Code Civ. Proc., § 526, subd. (a)(1).) This requires the plaintiff
21 show a reasonable probability of success on the merits. (*San Francisco Newspaper Printing Co.,*
22 *Inc. v. Sup. Ct.* (1985) 170 Cal.App.3d 438, 442.)

23 Alpine's imminent and severe harm compel an injunction against Grossmont pending the
24 SBE determination on bond funding. It is undisputed that Alpine's unification appears **imminent**,
25 considering the overwhelming support of registered voters who signed the unification petition, the
26 unanimous approval by SDCOE, the legislative policy in favor of unification, and the scathing
27 conclusions of the San Diego Grand Jury about Grossmont. Even Grossmont claimed to support

1 Alpine’s unification in its response to the Grand Jury Report. The only disputed issue before the
2 SBE is how funding and liabilities are to be equitably divided between Grossmont and Alpine.
3 However, absent an injunction the SBE’s decision will not be enforceable and its statutory
4 obligation to apportion these funds will have been usurped. If Grossmont is not enjoined from
5 spending what limited funds remain, they will be wasted before Alpine sees a penny. It will then
6 be impossible to build the Alpine High School in accordance with the wishes of the taxpayers and
7 the Unification Petition, and the SBE’s determination thereon, will have been obstructed.

8 The illegality of Grossmont’s continued expenditures further supports Alpine’s success on
9 the merits. By submitting Props H and U to the voters under Prop 39, Grossmont benefitted from a
10 lower threshold (55%) for voter approval, but limited its discretion in how these funds could be
11 spent. Grossmont’s continued expenditures on unapproved projects will violate the accountability
12 restrictions of Prop 39, as set forth in Article XIII A, section 1, subdivision (b)(3) of the
13 Constitution and as affirmed by the court in *Taxpayers v. SDUSD, supra*, 215 Cal.App.4th at 1024-
14 31.

15 **D. Alpine Will Suffer Significant Harm Absent an Injunction; Whereas**
16 **Grossmont Will Suffer No Harm**

17 Before granting a preliminary injunction, the court must also consider “the interim harm
18 that the plaintiff would be likely to sustain if the injunction were denied as compared to the harm
19 the defendant would be likely to suffer if the preliminary injunction were issued.” (*Smith v.*
20 *Adventist Health System/West* (2010) 182 Cal.App.4th 729, 749.) “If denial of an injunction would
21 result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted,
22 then it is an abuse of discretion to fail to grant the preliminary injunction.” (*Robbins v. Sup. Ct.,*
23 *supra*, 38 Cal.3d at 205.)

24 Grossmont will not be harmed in any substantial way by this injunction. Contrary to the
25 Grossmont Superintendent’s assertions to the press otherwise, Alpine does **not** seek to enjoin
26 Grossmont from spending funds on active or contracted construction projects—Alpine only seeks
27 to freeze Grossmont’s wasteful spending on any **future** projects pending the SBE determination on
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1 unification.

2 Also contrary to Grossmont’s assertion otherwise, the enrollment “trigger” in Prop U,
3 which required district enrollment to equal or exceed 2007-2008 levels (23,245 students) before the
4 high school must be funded, was met for each of the following three school years. Once a trigger
5 is pulled or met—it’s pulled or met. That is no longer any issue. Grossmont knows that—it
6 previously acknowledged that the enrollment trigger was met, by actively and actually purchasing
7 the Lazy “A” site and proceeding with plans to build the Alpine High School. In any event, the
8 trigger issue is irrelevant here, in that it does not affect Alpine’s successful unification. For the
9 purpose of unification, Alpine need only show that it has an adequate number of pupils pursuant to
10 Education Code section 35753(a)(1). SDCOE has confirmed, and Grossmont does not dispute, that
11 this criterion has been met.

12 Grossmont has recently published grossly inaccurate information in a desperate effort to
13 manufacture an appearance of harm. Grossmont’s Resolution falsely claims “38%” of
14 Grossmont’s “operating budget” will be cut by the SBE’s forthcoming apportionment of bond
15 funds, which will “effectively bankrupt” it. Grossmont makes this astonishingly false assertion
16 even though bond funds **do not** and **cannot** pay for any district operating expenses whatsoever.
17 (Const., art. XIII A, § 1, subd. (b)(3)(A); Ed. Code, §15278, (b)(2); see also, text of both Prop H
18 and Prop U.) By definition, the taxpayers pay for the bonds directly through taxes. **Not one dime**
19 **comes from Grossmont’s operating budget.** The SDCOE Board unanimously found that
20 allocation of school bond funds to Alpine would have **no negative effect** on Grossmont’s financial
21 operation. (Decl. S.Casamassima, Exh. J at p. 3.) Grossmont’s claim that it illegally relies on bond
22 revenues to fund daily operating expenses demonstrates either Grossmont’s ignorance of its own
23 bond program, and/or disdain for the taxpayers who pay for it.

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IV. CONCLUSION

A preliminary injunction in this case is necessary to prevent imminent, irreparable injury to Alpine and the taxpayers who reside therein. Accordingly, Alpine respectfully requests a preliminary injunction against Grossmont to enjoin further spending of school bond and state matching funds on any new projects or project approvals, to preserve the *status quo* pending the SBE determination on school bond fund allocation to Alpine.

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