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**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Arizona School Boards Association, Inc., a
Domestic Nonprofit Corporation,

Plaintiff,

v.

Copper State Education Alliance, Inc., a
Domestic Nonprofit Corporation,

Defendant.

No. 2024-cv- _____

COMPLAINT

The Arizona School Boards Association, Inc., (ASBA) by and through its attorneys Windy City Trial Group, Inc. as and for its Complaint against Copper State Education Alliance, Inc. (Copper State), states as follows:

NATURE OF THE ACTION

1. This is an action for federal copyright infringement by Copper State as well as a common law tortious interference claim.

PARTIES AND JURISDICTION

2. Plaintiff ASBA is an Arizona domestic nonprofit corporation formed on March 14, 1974 and is organized under the laws of Arizona with its principal place of business located at 2100 N. Central Avenue, #200, Phoenix, Arizona 85004.

5. Both general and specific jurisdiction is satisfied as both entities are Arizona entities operating in Arizona and the alleged infringing and tortious acts were committed by Defendant's agents within this District.

15 BACKGROUND FACTS

18 7. The President and Resident Agent of Copper State is Sophia Carrillo
19 (Carrillo).

24 9. In addition to her role at Copper State, Carrillo is the Board President of the
25 Creighton Elementary School District Governing Board (Creighton's Board).

2

1 otherwise commonly known as a Policy Manual.

2 11. Nicholas Maddox (Maddox) is an attorney licensed in the State of Texas,
3 who represents Copper State. Upon and information and belief at no time relevant has
4 Maddox been licensed in Arizona.
5

6 12. However, Maddox was retained by Del Palacio during his tenure as the
7 executive director at ASBA to serve as legal counsel on a pro-bono basis. Maddox's role
8 in this capacity was to advise policy service subscriber members on policy questions in the
9 absence of the ASBA in-house legal counsel. Maddox had unfettered access to the entire
10 content of the ASBA Model Policy Manual during his tenure.
11

12 *ASBA Policy Services*

13
14 13. Celebrating its 50th anniversary this year, the ASBA has provides a variety
15 of support services to Arizona ASBA member school districts, including a subscription to
16 its Policy Services.
17

18 14. One of the key benefits of subscribing to ASBA Policy Services is access to
19 the ASBA Model Policy Manual (the Manual).

20 15. Approximately 179 of Arizona's 224 school districts subscribe to ASBA
21 Policy Services.
22

23 16. The Manual is currently over 1,100 pages long and contains both publicly
24 available Arizona state and federal statutes and regulations, uniquely compiled with ASBA
25 original policy content.
26

27 17. The Manual is the subject of federally registered copyrights, registrations TX
28 0009-063-346 ('346) and TX 009-1-5-133 ('133), being attached hereto as **Exhibit A**. The

1 subsequent '133 registration represents a title change of the Manual.

2 18. Exhibit A also includes a certified copy of the Manual provided to the ASBA
3 via a sealed flash drive.

4 19. Pursuant to instructions from the Copyright Office of the United States, the
5 aforementioned certification becomes invalid once the flash drive is opened. Accordingly,
6 the ASBA is using its own current copy of the Manual until such time as use of the certified
7 flash drive is sanctioned by this Court.
8

9 20. The '346 copyright includes both ASBA original content and the original
10 compilation of public content, including Arizona state and federal statutes and regulations.
11

12 21. Painstaking review and analysis of often complex Arizona state and federal
13 laws and regulations is required for school districts to remain in compliance. This task is
14 almost universally performed by a third-party using a staff of policy analysts and education
15 attorneys such as the team employed by the ASBA.
16

17 22. The result of the aforementioned tasks is the creation of original content
18 policy recommendations, compiled with the applicable Arizona state and federal laws and
19 regulations in a readable and usable format that can be readily adopted and implemented
20 by ASBA member school districts.
21

22 23. The effort to create an original policy manual from scratch is a herculean task
23 requiring competitors such as the Risk Retention Trust and a team of some the state's top
24 education attorneys, to reportedly take over a year of effort to complete and implement a
25 policy manual for their client school districts in order to fairly compete with the ASBA.
26

27 24. Indeed, even the annual update to the Manual is a full-time task for several
28

1 ASBA policy analysts and legal counsel to accomplish and can take several months to
2 complete.

3 25. Authorized use of the Manual is exclusively controlled by a Policy Services
4 Subscription Agreement (Subscription Agreement). By way of example, the former
5 subscription agreement of Creighton Elementary School District 14 (Creighton), redacted
6 for confidential information, is attached hereto as **Exhibit B**.
7

8 26. While school board adoptions of certain portions of the Manual are
9 accessible to the public, this accessibility to the ASBA's copyrighted content is exclusively
10 subject to the terms set forth in the Subscription Agreement.
11

12 27. If a subscriber school district makes sufficiently transformative changes to
13 an ASBA Model Policy, adapting to a district's specific need, the revised policy created by
14 the school district becomes intellectual property of that school district and not of the ASBA.
15

16 ***Defendants' Infringing Conduct***

17 28. Copper State has recently emerged as a new competitor of the ASBA.
18

19 29. Creighton was a long-time member of the ASBA and a Policy Services
20 subscriber. *See*, Exhibit B.
21

22 30. On June 05, 2024, Creighton served notice to the ASBA that they were
23 terminating their membership with the ASBA which included terminating their
24 subscription to ASBA Policy Services, effective June 30, 2024.
25

26 31. Shortly thereafter, the ASBA discovered what appeared to be a verbatim
27 copy of substantial sections of the Manual's copyrighted content on Creighton's website,
28 despite no longer being an authorized user of the Manual.

1 32. Examination of the hyperlink to the Manual at
2 <https://copperstarpolicy.org/policy/creighton> uncovered Copper State as the source of the
3 Manual. The Copper State link <https://copperstarpolicy.org> indicated that Roosevelt and
4 Washington school districts were also clients of Copper State.
5

6 33. Copper State does not subscribe to ASBA Policy Services nor has the ASBA
7 otherwise authorized Copper State's use of the Manual.
8

9 34. The ASBA further observed a YouTube video of a meeting of Creighton's
10 Board on July 31, 2024, entitled Special Meeting, and that was conducted by its Board
11 President and Copper State President Carrillo. In the video it was observed, *inter alia*:
12

- 13 a. Carrillo reported a quorum of Creighton's Board members to be present;
- 14 b. the purpose of the meeting was to approve adoption of the Manual;
- 15 c. a presentation by former ASBA Executive Director and current Copper State
16 CEO Del Palacio, highlighted features of a mobile app to easily access the
17 Manual via Copper State;
- 18 d. as Copper State's attorney, Maddox offered to provide any legal advice needed
19 to interpret or implement the policies delineated in the Manual;
- 20 e. an endorsement of the Manual was made by Creighton Superintendent Jay
21 Mann; and
- 22 f. a quorum of Creighton's Board members unanimously approved adoption of the
23 Manual.
24
25
26

27 35. On August 05, 2024, undersigned intellectual property counsel for the ASBA
28 Dennis Esford (Esford) drafted and tendered via United States Postal Service (USPS)

1 Certified and First Class, a cease-and-desist letter to Defendants, noting *inter alia*, the
2 brazen verbatim copying of at least a substantial portion of the Manual, citing the
3 aforementioned federal copyright registrations and a demand to cease use of the subject
4 content supported by a sworn affidavit of compliance to Esford's Phoenix office on or
5 before August 16, 2024.
6

7 36. The "green cards" returned by the USPS indicate that both Creighton,
8 Creighton's Board and Copper State received the aforementioned cease-and-desist letters
9 via certified mail on August 08, 2024. The certified cease-and-desist letter addressed to
10 Carrillo at Copper State was returned as unclaimed on August 30, 2024.
11

12 37. In the afternoon of Wednesday, August 21, 2024, Esford returned a voice
13 mail from Maddox that morning. Maddox indicated that he was legal counsel to Copper
14 State and that they were in the process of changing out the Manual by the end of the week.
15

16 38. Maddox further stated the change would "automatically" be reflected on
17 Creighton's website which confirmed the aforementioned link was to ASBA content
18 controlled by Copper State.
19

20 39. Maddox further stated that Copper State would also comply with the ASBA's
21 demand for a sworn statement regarding the removal and use of the Manual's original
22 content in its business.
23

24 40. In the August 21, 2024 call, Esford agreed to give Copper State a few more
25 days, until Wednesday, August 28, 2024 to comply.
26

27 41. However, after reporting back to the ASBA, the Executive Committee of its
28 Board insisted that the ASBA content accessible via Copper State and/or Creighton be

1 removed from public access immediately or proceed with litigation.

2 42. On the same day, August 21, 2024, Esford reached out to Maddox by
3 telephone to inform him of the Board's direction. Maddox stated he would make a call and
4 report back.
5

6 43. On the morning of Thursday, August 22, 2024, having not heard from
7 Maddox, Esford again reached out but this time necessitating a voice mail advising of the
8 ASBA's position, *i.e.*, that the ASBA content must be removed from public access
9 immediately or Esford was directed to file a Complaint.
10

11 44. On Friday morning, August 23, 2024 at 9:01 a.m. local time, Esford sent an
12 email with an initial draft of this Complaint to Maddox, Creighton Superintendent Jay
13 Mann, copied to Mann's assistant and current ASBA Acting Executive Director Ellen
14 White (White). The email advised that the ASBA content must be pulled down by noon
15 (12:00 pm) local time or litigation would proceed.
16
17

18 45. At 11:16 a.m. local time on August 23, 2024, Esford received an email from
19 Creighton's outside counsel indicating that the link on Creighton's website had been
20 removed as of 10 a.m. that morning. Creighton counsel further stated that she requested
21 Copper State to remove same from its website and asked for an extension to 5:00 p.m. to
22 confirm Copper State had complied. Esford confirmed the removal from Creighton's
23 website and agreed to the extension.
24

25 46. On Thursday, August 23, 2024, Esford spoke with Maddox by telephone and
26 Maddox agreed to provide a sworn affidavit the following week to confirm the Manual
27 was not being used by any unauthorized school district, including Creighton.
28

1 47. On Wednesday, August 28, 2024, having not heard from Maddox, Esford
2 sent Maddox an email asking for confirmation that the promised Affidavit would arrive by
3 5:00 p.m. on Friday September 02, 2024. Esford attached screenshots from Copper State's
4 website still showing Creighton, Roosevelt and Washington as Copper State clients using
5 the Manual. Esford then raised another concern at this time—that with Roosevelt and
6 Washington being current ASBA Policy Services subscribers, Copper State was potentially
7 exposing itself to tortious interference as well as copyright infringement.
8

9
10 48. On September 03, 2024 Esford and Maddox had yet another telephone
11 discussion, followed up with an email by Esford to Maddox in which Copper State, through
12 its counsel Maddox affirmed as follows:
13

14 a. The Creighton, Roosevelt and Washington school districts did not
15 have the Manual available to them via Copper State, they are not Copper State
16 policy services clients, *nor was the Manual being promulgated to the public by*
17 *Copper State.* (emphasis added)
18

19 b. Copper State would provide an affidavit by the close of business on
20 Thursday, September 05, 2024, stating that it had immediately halted use of the
21 Manual and removed links to the Manual from any school districts, Copper State or
22 third-party websites. Maddox explained that the aforementioned internal links were
23 now simply work-in-progress documents *internal only to Copper State.* (emphasis
24 added)
25

26
27 49. In his September 03, 2024 email, Esford again expressed concern that any
28 attempt to use the Manual to entice school districts to unsubscribe from ASBA Policy

1 Services in favor of Copper State would constitute tortious interference in addition to
2 copyright infringement claims.

3 50. Finally, Esford further warned Maddox in the September 03, 2024 email that
4 he was meeting with the ASBA that evening. If an Affidavit affirming compliance with the
5 above terms was not forthcoming by the close of business on Thursday, September 05,
6 2024, the ASBA might authorize litigation without further notice.

7
8 51. At 9:41 a.m. local time on Thursday, September 05, 2024, Esford received a
9 sworn affidavit via email from Maddox, executed by Del Palacio, that affirmed, *inter alia*:

- 11 a. Del Palacio had full control and ownership of all Copper State content;
12
13 b. Creighton, Roosevelt, and Washington school districts do not have the
14 Manual via Copper State; and
15
16 c. ***CSEA [Copper State] has halted any use of the ASBA [Model] Policy***
17 ***Manual and has not used or removed the use of the ASBA [Model]***
18 ***Policy Manual from any school districts or third parties or third-party***
19 ***websites.*** (emphasis added)

20 52. After reviewing the Affidavit, Esford called Maddox, at his request, to insure
21 the Affidavit was adequate. Esford told Maddox that while he had confirmed that the
22 Manual was not publicly available on the Copper State, Creighton, Roosevelt or
23 Washington websites, Esford nonetheless cautioned that Copper State should consider
24 changing or disabling the existing internal links to the Manual as being used by Creighton
25 because others may have that internal link which could cause unnecessary confusion
26 regarding the public availability of ASBA copyrighted content via Copper State. Maddox
27
28

1 agreed this was a good idea to consider.

2 53. Satisfied that Copper State was no longer using the copyrighted portions of
3 the Manual in its business, Esford reported to White and ASBA incoming Executive
4 Director Justan Rice that the matter had been resolved. What Esford did not know was that
5 Copper State planned to dishonor the aforementioned Affidavit that very evening.
6

7 ***Copper State's Presentation to Phoenix Union***
8

9 54. The Phoenix Union School District (Phoenix Union) is a current ASBA
10 Policy Services subscriber.

11 55. On the evening of Thursday, September 05, 2024, just hours after it tendered
12 the aforementioned sworn Affidavit, Copper State made a pitch for its services, including
13 policy and legal services, to the Phoenix Union School District's Governing Board (the
14 Phoenix Union Board)
15

16 56. The Phoenix Union Board's meeting was live-streamed to the public,
17 recorded and made available for future public viewing on YouTube.
18

19 57. Reviewing the YouTube video of the aforementioned meeting, the following
20 relevant facts were presented:

21 a. Del Palacio introduced himself as Copper State's CEO and Maddox
22 as its Chief Legal Counsel;
23

24 b. Del Palacio asserted that the Creighton and Cartwright school districts
25 are Copper State clients;
26

27 c. Del Palacio invited the Board members to "open their phones and go
28 to copperstarpolicy.org" to view Copper State's mobile platform. [This is one of the

1 aforementioned internal links removed from public view, now made public again,
2 falsely showing the Creighton school district using the copyrighted content of the
3 Manual notwithstanding Del Palacio's sworn affidavit to the contrary just hours
4 earlier.]

5
6 d. In response to a question from Phoenix Union Board's President
7 Ceyshe Napa regarding the legal credentials of Copper State and its ability to
8 provide policy services in accordance with Arizona law, Maddox asserted the
9 following:
10

11 i. Copper State utilizes a Texas-based law firm of 19 attorneys
12 where he (Maddox) is a shareholder;

13 ii. The Texas firm has a Phoenix office led by Martín Quezada;

14 iii. The Texas firm has four attorneys who are "dual-licensed" in
15 Texas and Arizona including himself, "with two more on the way."
16

17 e. Under further questioning from Phoenix Union Board's clerk Aaron
18 Marquez, Del Palacio agreed that Policy and Legal services are the core products of
19 Copper State, with Leadership Development and Training included in the overall
20 \$20,000 per year membership package.
21

22
23 58. Certain of the aforementioned statements by Del Palacio and Maddox to the
24 Phoenix Union Board, upon information and belief, are either outright false or misleading.

25 To wit:

26
27 a. Upon inquiry to both the membership department of the Arizona Bar
28 Association and its referral of Esford to the admissions department of the Arizona

1 Supreme Court, Esford has confirmed via email that any attorney licensed to
2 practice in Arizona is listed in the Arizona Bar Association Member Directory.

3 b. The Texas firm to which Maddox referred is O'Hanlon, Demerath &
4 Castillo. However, a search of the Arizona Bar Association Member Directory
5 shows only attorneys Benjamin Castillo and Martín Quezada (who is not listed on
6 its website or by the Arizona Bar as a member of the Texas firm) as being licensed
7 to practice in Arizona.
8

9 c. A search of the websites of the Arizona Corporation Commission and
10 O'Hanlon, Demerath & Castillo provides no indication of an Arizona presence by
11 this Texas firm, nor does a Google search demonstrate any Arizona presence.
12

13
14 59. Taken together, the aforementioned conduct and statements by Del Palacio
15 and Maddox support claims of both willful federal copyright infringement and tortious
16 interference under Arizona common law.
17

18 60. Despite the aforementioned good-faith, but unsuccessful efforts of the ASBA
19 to halt Copper State's assault on its legal rights, the ASBA has no choice but to now seek
20 judicial intervention to protect and not abandon its copyrights, and the right to fairly
21 compete with Copper State.
22

23 **Claim One: Direct Copyright Infringement by Copper State**

24 61. Plaintiff ASBA incorporates Paragraphs 1-60 as and for Paragraph 61 as if
25 fully set forth herein.
26

27 62. ASBA is the owner of the original work currently entitled ASBA Model
28 Policy Manual and is protected by federal copyright registrations TX 0009-063-346 and

1 TX 0009-105-33.

2 63. Defendant Copper State has misappropriated substantial copyrighted
3 portions the ASBA Model Policy Manual without license or other authorization of its
4 owner, the ASBA.
5

6 64. The ASBA Model Policy Manual provides specific copyright notice through
7 the registered copyright symbol ® to clearly identify subject portions of the Manual as the
8 original protected work of the ASBA.
9

10 65. The aforementioned conduct constitutes direct infringement pursuant to 17
11 U.S.C. §501.

12 66. Defendant Copper State has and continues to profit from the aforementioned
13 original work of the ASBA.
14

15 67. Accordingly, the ASBA is entitled to its actual damages and Copper State's
16 profits in an amount to be proven at trial pursuant to 17 U.S.C. §504(b).
17

18 68. In the alternative, and at its election, the ASBA is entitled to statutory
19 damages up to \$150,000 per infringement pursuant to 17 U.S.C. §504(c)(2).
20

21 69. In light of Copper State's continued infringement after being presented with
22 irrefutable evidence of the ASBA's copyrights, Copper State's conduct should be deemed
23 willful pursuant to 17 U.S.C. §505(c)(2). Accordingly, the ASBA should also be awarded
24 its reasonable attorneys' fees and costs pursuant to 17 U.S.C. §505.
25

26 70. The ASBA is further entitled to injunctive relief pursuant to 17 U.S.C. §502
27 to enjoin Copper State's ongoing infringement of the ASBA Model Policy Manual.
28

1 **WHEREFORE**, Plaintiff Arizona School Boards Association prays that this
2 Honorable Court enter an Order in its favor and against Defendant Copper State Education
3 Alliance as follows:

4
5 1) Pursuant to 17 U.S.C. §502, permanently enjoin the Copper State Education
6 Alliance from using any substantial portion of the ASBA Model Policy Manual, federal
7 copyright registrations TX 0009-063-346 and TX 0009-105-33;

8
9 2) Pursuant to 17 U.S.C. §504(b), award Plaintiff its actual damages inclusive
10 of Copper State Education Alliance's profits in an amount to be proven at trial, or at the
11 ASBA's election, statutory damages up to \$150,000 pursuant to 17 U.S.C. §504(c)(2);

12
13 3) Award Plaintiff its reasonable attorneys' fees and costs pursuant to 17 U.S.C.
14 §505; and

15 4) Such other and further relief this Court deems just and proper.

16 **Claim Two: Tortious Interference with Prospective Economic Advantage**

17
18 71. Plaintiff ASBA incorporates Paragraphs 1-60 as and for Paragraph 71 as if
19 fully set forth herein.

20 72. The ASBA had a valid contract with Creighton until June 2024 when
21 Creighton elected to not to renew the contract.

22
23 73. Copper State knew of the ASBA's contract with Creighton.

24 74. The existence of the Manual associated with Creighton caused Creighton to
25 believe it could take advantage of the copyrighted portions of the ASBA Model Policy
26 Manual to the ASBA's detriment.

27
28 75. The aforementioned acts demonstrate intentional interference with the

ASBA's ongoing economic relationship with Creighton.

76. As the proximate result of Copper State's intentional conduct herein, the ASBA was damaged in the form of the reasonable renewal of Creighton's subscription for 2024-2025.

WHEREFORE, Plaintiff Arizona School Boards Association prays that this Honorable Court enter an Order in its favor and against Defendant Copper State Education Alliance as follows:

5) Award damages in the amount of the renewal revenue of Creighton's policy services subscription in an amount not less than \$5,000;

6) Award Plaintiff its attorneys' fees and costs for Copper State's willful conduct; and

7) Such other and further relief this Court deems just and proper.

Date: September 19, 2024

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Respectfully submitted,

Arizona School Boards Association

By: */s/ Dennis F. Esford*
One of Its Attorneys