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FILED
SUPERIOR COURT-STOCKTON

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN JOAQUIN

10 GEORGE YAGI,

11 Petitioner,

12 v.

13 SAN JOAQUIN DELTA COMMUNITY
14 COLLEGE DISTRICT,

15 Respondent.

STK-CV-111M-2020-7409

VERIFIED PETITION FOR WRIT OF
MANDATE

[Code Civ. Proc. §1085]

Hearing Date: NOV - 2 2020

Hearing Time: 9:00 AM

Department: 11B

Judge: ROGER ROSS

Date Action Filed: SEP - 4 2020

File By Fax

17 This is a Petition for a Writ of Mandate pursuant to California Code of Civil Procedure
18 section 1085, brought by Petitioner George Yagi (hereinafter "Petitioner"). Petitioner is a
19 College Professor who San Joaquin Delta Community College District (hereinafter
20 "Respondent") employed in its Humanities, Social Science, Education, Kinesiology and
21 Athletics Departments beginning in August 2016. Petitioner brings the instant action to
22 compel Respondent to comply with the mandate of Education Code section 87482.5(a) to
23 classify a faculty member who worked more than 67 percent of the hours per week considered
24 a full-time assignment for regular employees having comparable duties as either a contract or
25 regular employee. Petitioner alleges that Respondent misclassified him as a temporary
26 employee in three different semesters—Spring 2017, Spring 2018, and Fall 2019. Petitioner
27 further alleges that Respondent released him from employment in January 2020 without due
28 process and without following the mandates of the California Education Code, including but

Verified Petition for Writ of Mandate

1 not limited to California Education Code sections 87482.5, 87605, 87607, 87608, 87608.5 and
2 87610.

3 Petitioner seeks immediate court intervention to compel Respondent to immediately
4 comply with these Education Code sections by: 1) reemploying Petitioner as a full-time
5 fourth-year contract employee or tenured employee; 2) paying Petitioner back pay for his lost
6 wages for the 2019-2020 school year and forward; 3) paying Petitioner any difference
7 between what he was paid as a temporary faculty member and what he should have been paid
8 as a contract employee from the 2017-2018 school year to the present; and 4) recognizing
9 Petitioner's due process rights as an either tenured employee or fourth-year contract employee
10 which must be complied with.

11 **PETITION FOR A WRIT OF MANDATE**

12 By this Verified Petition, Petitioner alleges as follows:

13 1. Petitioner was a faculty member employed by Respondent from August 2016
14 through January 17, 2020. (Declaration of George Yagi [hereinafter "Yagi Decl."], ¶1.)

15 2. On August 16, 2016, Respondent's Board approved the appointment of
16 Petitioner as an adjunct faculty member in the discipline of History. (Yagi Decl., ¶¶2-3, and
17 Exhibit A thereto).

18 3. On August 17, 2016 Respondent sent Petitioner a letter notifying him that
19 Respondent's Board approved his appointment as an hourly instructor. (Yagi Decl., ¶3, and
20 Exhibit A thereto).

21 4. Petitioner is a member of the San Joaquin Delta College Teachers' Association
22 CTA/NEA. (Yagi Decl., ¶5).

23 5. Petitioner was a member of the Humanities, Social Science, Education,
24 Kinesiology, and Athletics Departments at Respondent College and appointed to teach in the
25 discipline of History. (Yagi Decl., ¶2.)

26 6. Petitioner is qualified as a faculty member. He has a Bachelor of Arts with a
27 Major in History that he completed in May 2003. (Yagi Decl., ¶6, and Exhibit B thereto,
28 Resume of George Yagi).

1 7. Petitioner completed his Ph.D. in June 2007 at the University of Exeter. (Yagi
2 Decl., ¶7, and Exhibit B thereto).

3 8. Petitioner has approximately twelve (12) years of experience as an adjunct
4 faculty member at the University of Pacific, Benerd College. (Yagi Decl., ¶8, and Exhibit B
5 thereto).

6 9. Respondent College is located in San Joaquin County, California, and is a
7 public community college organized pursuant to and bound by the laws of the State of
8 California, including Education Code sections 87482.5(a), 87605, 87607, 87608, 87608.5 and
9 87610.

10 10. A Collectively Bargained Agreement (“CBA”) between Respondent and the
11 San Joaquin Delta College Teachers’ Association CTA/NEA sets forth a full-time workload
12 as a unit load of 15 units per semester pursuant to Articles 3.14 and 17.1. (See Declaration of
13 Dr. Elizabeth Maloney in Support of Verified Petition for Writ of Mandate (hereinafter
14 “Maloney Decl.”), ¶1 and Exhibit A thereto).

15 11. A Community College must reclassify as contract or regular faculty a faculty
16 member who works more than 67 percent of the hours considered a full-time assignment for
17 regular employees having comparable duties. Cal. Educ. Code § 87482.5(a).

18 12. To work more than 67 percent of the hours considered a full-time assignment
19 for regular employees having comparable duties, a faculty member at Respondent College
20 would need to work more than 10.05 weekly contact hours per semester. (Maloney Decl., ¶5;
21 see also Exhibit A thereto.)

22 13. During the Spring 2017, Spring 2018, and Fall 2019 semesters, Petitioner
23 worked more than 67 percent of the hours per week considered a full-time assignment for
24 regular employees having comparable duties to either a contract or regular employee.

25 14. During Spring 2017, Petitioner taught twelve (12) traditional classroom units:
26 History of Western Civilization II (HIST 4B - 3 units), two classes of History of the United
27 States II (HIST 17B - 3 units each), and Asian Pacific American History (HIST 34 - 3 units).
28 (Yagi Decl., ¶10; see also Exhibit C thereto).

1 15. Petitioner was initially assigned 6 units for Spring 2017. (Yagi Decl., ¶11; see
2 also Exhibit E thereto).

3 16. During the Spring 2017 semester, Respondent College made Petitioner the
4 instructor of record for two additional classes after the original instructor, Dr. Joseph Bisson,
5 passed away. (Yagi Decl., ¶12, and Exhibit G thereto).

6 17. Respondent College assigned Petitioner, commencing March 29, 2017, as a
7 long-term substitute to two additional courses previously taught by Dr. Bisson, when
8 Dr. Bisson went on sick leave. *Id.*

9 18. Dr. Bisson notified the College, through a March 24, 2017 email, when he
10 went on sick leave, that he did not intend to return to finish the semester. He subsequently
11 passed away during the semester. (Yagi Decl. ¶12, Exhibit G thereto).

12 19. After Dr. Bisson passed away, the College officially recognized Petitioner as
13 the instructor of record for both courses. (Yagi Decl., ¶12, Exhibit C thereto).

14 20. Petitioner served as the instructor of record and issued student grades for four
15 courses in the Spring of 2017 History of Western Civilization II (HIST 4B - 3 units), two
16 classes of History of the United States II (HIST 17B - 3 units each), and Asian Pacific
17 American History (HIST 34 - 3 units). (Yagi Decl., ¶¶10, 12; see also Exhibit C thereto.)

18 21. With those four total classes, Petitioner taught 12 units during Spring 2017. *Id.*

19 22. As a long-term substitute and later instructor of record, Petitioner's teaching
20 service in the additional two classes from Spring 2017 qualify, as a matter of law, for
21 determining Petitioner's proper classification. (Cal. Educ. Code § 87482.5; See
22 *Balasubramanian v. San Diego Community College Dist.*, (2000) 80 Cal.App.4th 977, 987).

23 23. During Spring 2018, Petitioner taught fifteen (15) traditional classroom units:
24 History of Western Civilization II (HIST 4B - 3 units), History of the United States I (HIST
25 17A - 3 units), History of the United States II (HIST 17B - 3 units), and two classes of Asian
26 Pacific American History (HIST 34 - 3 units). (Yagi Decl., ¶14; see also Exhibits D and E
27 thereto.)

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1 24. During Fall 2019, Petitioner taught fifteen (15) traditional classroom units:
2 History of South and Southeast Asian Civilization (HIST 6B - 3 Units), History Through
3 Film (HIST 7 - 3 Units), History of the United States I (HIST 17A - 3 Units), two classes
4 of Asian Pacific American History (HIST 34 - 3 Units). (Yagi Decl., ¶15; see also Exhibit E
5 thereto.)

6 25. On October 28, 2019, Respondent College placed Petitioner on paid
7 administrative leave to conduct an investigation. The College continued to pay Petitioner full
8 pay and benefits for the remainder of the Fall 2019 semester. (Yagi Decl., ¶16, Exhibit F
9 thereto).

10 26. On January 17, 2020, Respondent College notified Petitioner that it terminated
11 his employment that same day due to allegations of unprofessional conduct. (Yagi Decl., ¶17,
12 Exhibit F thereto).

13 27. Respondent College did not offer Petitioner any hearing or other way to appeal
14 the January 17, 2020 dismissal. (Yagi Decl., ¶17, Exhibit F thereto).

15 28. Respondent continued to employ Petitioner as faculty through January 17,
16 2020. (Yagi Decl., ¶17, and Exhibit F thereto).

17 29. Under Articles 3.14 and 17.1 of the CBA, a full-time workload at Respondent
18 College is a load of 15 units per semester. (Maloney Decl., ¶5, and Exhibit A thereto).

19 30. Pursuant to California Education Code section 87482.5, a person employed to
20 teach classes at a community college for 67 percent or more of the hours considered a full-
21 time assignment for “regular employees having comparable duties” will be considered full-
22 time and may not be classified as a temporary employee. Cal. Educ. Code § 87482.5 (a).

23 31. Petitioner would need to work more than the equivalent of 10.05 units (.67
24 times 15) to be more than 67 percent of the hours considered a full-time assignment.

25 32. In Spring 2017, Petitioner taught a total of twelve (12) units, as described
26 above, putting Petitioner above a 67 percent workload.

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1 33. In Spring 2018, Petitioner taught a total of fifteen (15) traditional classroom
2 units putting Petitioner above a 67 percent workload.

3 34. In the Fall of 2019, Petitioner taught fifteen (15) units putting Petitioner above
4 a 67 percent workload.

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Semester	Units
Spring 2017	12
Spring 2018	15
Fall 2019	15

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11 35. After Petitioner taught his first semester of more than 67 percent of a full-time
12 assignment, Respondent had a legal mandate to recognize Petitioner as contract, not
13 temporary, faculty. Cal. Educ. Code § 87482.5(a).

14 36. Respondent failed to comply with this mandatory duty. *Ibid.*

15 37. Respondent had a duty to recognize that Petitioner fulfilled his first contract
16 year at the end of the 2017-2018 school year after he worked more than 75 percent of that
17 year. Cal. Educ. Code § 87605.

18 38. Respondent failed to comply with this mandatory duty.

19 39. Respondent ceased to employ Petitioner as faculty effective January 17, 2020.
20 (Yagi Decl., ¶17.)

21 40. Respondent terminated Petitioner's employment due to allegations of
22 unprofessional conduct pursuant to Education Code section 87665. (Yagi Decl., ¶17, and
23 Exhibit F thereto.)

24 41. Education Code section 87665 allows community colleges to terminate
25 temporary employees at its discretion. Educ. Code § 87665.

26 42. However, Petitioner was not a temporary employee and was a contract
27 employee as a matter of law. Educ. Code § 87482.5.

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1 43. Respondent College may only dismiss contract employees for cause pursuant
2 to Education Code section 87667 based on one or more grounds set forth in Education Code
3 section 87732. Cal. Educ. Code §§ 87667; 87732.

4 44. When a Community College wants to dismiss or penalize a contract or regular
5 employee, it must provide that employee with due process in the form of a right to appeal and
6 a hearing before an arbitrator or before an administrative law judge. Cal. Educ. Code
7 §§ 87672-87680.

8 45. Respondent failed to provide Petitioner with the right to appeal his termination
9 or with any hearing to contest his termination. (Yagi Decl., ¶¶17-18, Exhibit F thereto.)

10 46. Respondent's failure to provide Petitioner, a regular or contract employee as a
11 matter of law, means that Petitioner has the right to return to Respondent to teach for the
12 2020-2021 school year as at least fourth-year contract employee. Cal. Educ. Code §§ 87608-
13 87610.

14 47. Contract faculty, at Respondent College, have the right to be employed full-
15 time, at the equivalent of fifteen units. (Maloney Decl., Exhibit A, CBA, section 17.2).

16 48. Contract faculty have the right to be employed for an entire school year. Cal.
17 Educ. Code §§ 87667, 87732, 87608; 87608.5.

18 49. Respondent continues to violate its mandatory duty under California Education
19 Code sections 87482.5(a), 87605-87610, 87667-87682, 87732, and 87740 by not reemploying
20 Petitioner as a full-time contract faculty member.

21 50. Petitioner should be classified upon return as at least a fourth-year contract
22 employee, since he was first misclassified in the Spring of 2017 and worked during the
23 subsequent 2017-2018, 2018-2019, and 2019-2020 school years. Cal. Educ. Code § 87482.5.

24 51. The College continued to misclassify Petitioner during the 2017-2018 and
25 2018-2019 school years. *Ibid.*

26 52. If Petitioner also worked 75 percent of the days of the 2016-2017 school year,
27 then the College may also choose to retroactively include the 2016-2017 school year as
28 Petitioner's first probationary year. Cal. Educ. Code § 87475.

1 53. If the College also chooses to retroactively include the 2016-2017 school year
2 as Petitioner's first probationary year, then Petitioner would return as tenured faculty. Cal.
3 Educ. Code § 87610 et. seq.; § 87475.

4 54. Petitioner has a beneficial interest in Respondent faithfully performing its legal
5 duty to classify Petitioner properly, to continue his employment, and to provide Petitioner
6 with due process protections prior to ceasing his employment.

7 55. Petitioner, as California Community College faculty, is the intended
8 beneficiary of California Education Code sections 87482.5(a), 87605, 87607, 87608, 87608.5,
9 87610, 87667-87682, 87732, and 87740 and Respondent's persistent violation of the mandates
10 of those provisions deprive Petitioner of his legal rights to due process and continued
11 employment.

12 56. Respondent has a clear, present, nondiscretionary, and mandatory duty to
13 comply with Education Code sections 87482.5(a), 87605, 87607, 87608, 87608.5, 87610,
14 87667-87682, 87732, and 87740.

15 57. There are no available administrative remedies for Petitioner to exhaust. The
16 California Education Code is not self-executing and Petitions for Writ of Mandate are the
17 vehicle commonly used to vindicate Education Code rights. E.g. *Theiler v. Ventura County*
18 *Community College Dist.*, (2011) 198 Cal.App.4th 852; *McGuire v. Governing Bd.*, (1984)
19 161 Cal.App.3d 87.

20 58. The only way to seek relief for a violation of these Education Code rights is
21 through a Petition for a Writ of Mandate; there is no administrative hearing process for a
22 violation of California Education Code section 87482.5 (b). E.g. *Theiler v. Ventura County*
23 *Community College Dist.*, 198 Cal.App.4th 852; *McGuire v. Governing Bd.*, (1984)
24 161 Cal.App.3d 871.

25 59. The Education Code does not establish a cause of action to enforce these
26 provisions through an ordinary action for damages. Petitioner must file this Petition for Writ
27 of Mandate in order to obtain relief for a violation of his employment rights under the
28 Education Code. Mandamus is the proper remedy for violations of the Education Code where

1 no other relief is specifically provided. See E.g. *Entezampour v. North Orange County*
2 *Community College Dist.*, (2010) 190 Cal.App.4th 832.

3 60. Regardless, Petitioner has sought to resolve this matter with Respondent. On
4 February 12, 2020 and June 26, 2020, Petitioner's attorney sent letters to Respondent College
5 placing Respondent on notice of Petitioner's misclassification. (Declaration of Gina Verraster
6 in Support of Petition for Writ of Mandate, (hereinafter "Verraster Decl."), ¶¶2, 6, and
7 Exhibits A and D thereto).

8 61. Petitioner, through his attorney, also sent a letter to Respondent's Board on
9 April 7, 2020, which constituted a claim pursuant to the California Tort Claims Act,
10 California Government Code sections 905 et. seq. Petitioner does not believe the California
11 Tort Claims Act applies to his claim since his claim is for reinstatement and lost wages. Cal.
12 Gov't Code § 905(c) (exempting lost wages from the filing requirements of the Act).
13 (Verraster Decl., ¶4, and Exhibit C.)

14 62. Respondent's Board failed to notify Petitioner of any action taken on his claim.
15 (Verraster Decl., ¶5.)

16 63. Therefore, Petitioner's claim was rejected as a matter of law after forty-five
17 (45) days, on May 23, 2020. Cal. Gov't Code § 912.4(c). (Verraster Decl., ¶5.)

18 64. Petitioner therefore has two years from the date of January 17, 2020, the date
19 of his illegal and wrongful termination, to pursue this action. Cal. Gov't Code § 945.6 (a)(2).

20 65. Petitioner has exhausted all available administrative remedies required to be
21 pursued by him, and Petitioner has fulfilled any administrative prerequisites to bringing this
22 Petition as described above.

23 66. Petitioner has not been able to resolve this matter with Respondent College.
24 (See Verraster Decl., ¶3, 9 and Exhibit B.)

25 67. Petitioner has no plain, speedy, and adequate remedy at law to challenge
26 Respondent's conduct other than the relief sought in this Petition for violation of his rights
27 under the Education Code.

28 68. Petitioner filed this Petition in a timely fashion.

1 69. Petitioner has not engaged in any delay that has prejudiced Respondent.
2 Petitioner has attempted to resolve this issue through both formal and informal means
3 multiple times without success.

4 70. As a result of Respondent's above-described actions, and in the event
5 Respondent is not compelled by this Court to perform its legal duty, Petitioner will be
6 irreparably damaged.

7 RELIEF

8 WHEREFORE, Petitioner respectfully prays that:

9 1. This Court issue a Writ compelling Respondent to comply with the mandatory
10 provisions of the California Education Code sections.

11 2. This Court issue a Writ of Mandate ordering Respondent to:

12 a) Reemploy Petitioner as a full-time either tenured or fourth-year
13 contract employee;

14 b) Pay Petitioner back pay for his lost wages for the 2019-2020 school
15 year and forward;

16 c) Pay Petitioner any difference between what he was paid as a temporary
17 faculty member and what he should have been paid as a full-time contract employee;

18 and

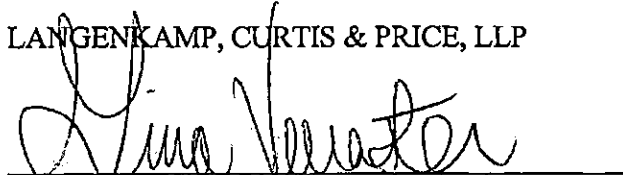
19 d) Recognize Petitioner's due process rights which must be complied with.

20 3. This Court award Petitioner the costs of this action and/or reasonable
21 attorneys' fees pursuant to Code of Civil Procedure section 1021.5 and/or California
22 Government Code section 800 and/or any other applicable statute;

23 4. This Court grant such other relief as may be just and proper.

24 Dated: August 24, 2020.

LANGENKAMP, CURTIS & PRICE, LLP

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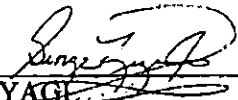
26 By: GINA VERRASTER
27 Attorneys for Petitioner
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VERIFICATION

I, George Yagi, hereby declare under penalty of perjury that I read the attached
Verified Petition for Writ of Mandate, I know the contents thereof to be true and correct.

Executed at Stockton, California on August 31, 2020.



GEORGE YAGI