

COPY

NOV - 9 2004



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DEPUTY CLERK

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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 THE STATE OF ARIZONA, ex rel.,  
11 TERRY GODDARD, Attorney General,

12 Plaintiff,

13 -v-

14 MOHAVE COUNTY EDUCATIONAL  
SERVICES COOPERATIVE by and  
15 through the Mohave County Schools  
Superintendent,

16 Defendant.

No. CV2004-021711

**CONSENT JUDGMENT**

18 The State of Arizona, through its Attorney General, filed its Complaint in this  
19 action ("Complaint") on November 9, 2004, on behalf of the general welfare and  
20 economy of the State. The Complaint alleges violations of the Arizona Education Act,  
21 A.R.S. § 15-101 *et seq.* the Arizona Administrative Code, A.A.C. R7-2-1001, *et seq.*,  
22 and the Arizona Procurement Code, A.R.S. § 41-2501, *et seq.* by Mohave County  
23 Educational Services Cooperative ("MESC") by and through the Mohave County  
24 Schools Superintendent, (the "Superintendent").

1 To resolve this matter, the Defendant and the State have agreed to the entry of  
2 this Consent Judgment setting forth the following findings and ordering the following  
3 relief.

4 THEREFORE, the Court finds as follows:

5 A. DEFINITIONS

6 Throughout this Consent Judgment, the following terms have the meanings  
7 indicated below:

- 8 1. "Affiliate" means any person whose activities the Superintendent or any  
9 employee of Mohave County controls or has a right to control with respect to  
10 any conduct relevant to the State's complaint or to this Consent Judgment and  
11 with respect to work performed or to be performed by the affiliate for or on  
12 behalf of the Superintendent or the Cooperative.
- 13 2. "ASPIN" means Arizona School Partners in Nutrition.
- 14 3. "Attorney General" or "AG" means the Arizona Attorney and any duly  
15 authorized representative of the Office of Attorney General, State of Arizona.
- 16 4. "Attorney-client Privilege" shall mean the legal privilege which, for purposes  
17 of this Consent Judgment, attaches only to "legal advice" given by an  
18 attorney to a client and actual communications between a client to an attorney  
19 relating to specific legal advice, and does not include documents, witness  
20 statements, investigative reports, other summaries, compendia of facts, or the  
21 fact themselves. The communication of any fact to an attorney does not give  
22 the Cooperative a claim that the facts are attorney-client privileged. The term  
23 "legal advice" shall be narrowly construed in accordance with *City of*  
24 *Prescott v. Town of Chino Valley*, 166 Ariz. 480, 803 P.2d 891 (1980).
- 25 5. "Board" means the Mohave County Board of Supervisors.
- 26 6. "CPA" means a "Cooperative Purchasing Agreement" between the  
Cooperative, or the Superintendent, on the one hand, and another entity, on

- 1 the other hand, or any other agreement between such parties for “cooperative  
2 purchasing” as the latter term is defined in A.A.C. R7-2-1001(17).
- 3 7. “Complaint” means the State’s complaint in this action.
- 4 8. The “Cooperative” means MESC and ASPIN and includes any Successor to  
5 either MESC or ASPIN, as Successor is defined below.
- 6 9. “County” means Mohave County, Arizona.
- 7 10. “OAG” means the Office of the Arizona Auditor General.
- 8 11. “Education Procurement Code” means those rule adopted by the Arizona  
9 State Board of Education, codified at A.A.C. R7-2-1001 *et seq.*
- 10 12. “Employee” means any person who is now or will become employed by the  
11 Office of the Superintendent or by the Cooperative in any capacity during the  
12 term of this Consent Judgment.
- 13 13. “Invitation for bids” has that meaning set forth in A.A.C. R7-2-1001(46).
- 14 14. “Key Employee” means any individual identified as a “Key Employee” by  
15 letter from Gary L. Lassen to the Arizona Attorney General dated October 21,  
16 2004, attached as Exhibit A to this judgment.
- 17 15. “Member” means any entity designated by the Cooperative as such or any  
18 entity entering into a CPA, SPA, or PA, with the Cooperative or an affiliate or  
19 Successor.
- 20 16. “MESC” means the Mohave Educational Services Cooperative and any  
21 Successor, as that term is defined below.
- 22 17. “Person” means any natural person and any corporation, partnership, joint  
23 venture, formal or informal association, and any other legal entity.
- 24 18. “PA” means any purchasing contract between the Cooperative, or the  
25 Superintendent, on the one hand, and another entity, on the other hand.
- 26 19. “PPU” means “public procurement unit” as defined in A.R.S. § 41-2631.
20. “Request for Proposals” has that meaning set forth in A.A.C. R7-2-1001(73).

- 1 21. "SPA" means any service program agreement between the Cooperative, or  
2 the Superintendent, on the one hand, and another entity, on the other hand.
- 3 22. "State" means the State of Arizona, acting through its Attorney General.
- 4 23. "Superintendent" means the Mohave County Schools Superintendent.
- 5 24. "Successor" means either (A) or (B) below:
- 6 (A) any person acting as PPU, to which any of the following are assigned,  
7 sold, and/or transferred by the Cooperative, the Superintendent or the  
8 County, during the term of this Consent Judgment:
- 9 (1) assets, including, but not limited to, real property, funds,  
10 accounts, stocks, escrow monies, furniture, fixtures or  
11 equipment;
- 12 (2) CPAs,
- 13 (3) SPAs, or
- 14 (4) PAs.
- 15 (B) any person acting as a PPU that, during the term of this Consent  
16 Agreement, meets any one of the following criteria:
- 17 (1) is governed by a board of directors that has a majority of  
18 members who are Key Employees;
- 19 (2) employs one or more Key Employees in a management  
20 capacity;
- 21 (3) has an executive committee on which two or more Key  
22 Employees serves;
- 23 (4) is managed by one or more Key Employees.

24 B. FINDINGS

- 25 1. The Superintendent transacts business in Mohave County, Maricopa County,  
26 and Pima County, and the cause of action giving rise to the Complaint arose

- 1 within Arizona. Venue in Maricopa County is proper for all claims pursuant  
2 to A.R.S. § 12-401(17).
- 3 2. This Court has jurisdiction over the subject matter of this action and over the  
4 parties stipulating to the entry of the Consent Judgment.
- 5 3. MESC and ASPIN are programs of the Office of the Superintendent  
6 established pursuant to A.R.S. § 15-365(A).
- 7 4. Between July 1, 1997, and June 30, 2000, the Cooperative, based on  
8 investigations of the OAG, engaged in activities and accounting not in  
9 accordance with A.R.S. Title 15, A.R.S. § 15-101 *et seq.*, the Arizona State  
10 Board of Education Rules and Regulations relating to educational  
11 procurement found at A.A.C. R7-2-1001 *et seq.*, the Arizona State  
12 Procurement Code, A.R.S. § 41-2501 *et seq.*, and did not follow Mohave  
13 County's own internal policies and procedures regarding procurement,  
14 operations, and contracting.
- 15 5. In July 1999, at the request of the AG, the OAG commenced an investigation  
16 of the Cooperative's purchasing and financial transactions and of the  
17 governance and operation of the Cooperative.
- 18 6. Investigations by the AG and the OAG were conducted in accordance with  
19 and within the scope of their statutory authority.
- 20 7. To avoid the further expenditures of public funds in prosecuting and  
21 defending this case, the State and Superintendent desire to resolve without  
22 trial the civil and criminal liability of the Cooperative by and through the  
23 Superintendent under A.R.S. §§ 15-213 and 41-2616 relating to issues  
24 identified by the OAG in its report dated January 24, 2003, and have  
25 consented to the entry of this Consent Judgment.
- 26 8. Based on the foregoing, and upon the Stipulation to Entry of this Consent  
Judgment annexed below, the Court finds itself fully apprised.

1 NOW THEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED AS  
2 FOLLOWS:

3 A. APPLICABILITY

4 The terms of this Consent Judgment shall apply to the Superintendent and the  
5 Cooperative. So long as the Cooperative is a program of the Office of the  
6 Superintendent, the Superintendent shall be responsible to ensure that the Employees  
7 and all affiliates act in conformity with the terms of this Consent Judgment. In the event  
8 the Cooperative is no longer a program of the Office of the Superintendent, the  
9 Cooperative shall be responsible to ensure that the Employees and all affiliates act in  
10 conformity with the terms of this Consent Judgment. The Superintendent shall not  
11 transfer any assets of the Cooperative or the County or assign or transfer any interest in  
12 any CPA, SPA, or PA's, except as specifically set forth this Consent Judgment.

13 B. TERM OF CONSENT JUDGMENT

14 Unless otherwise indicated, this Consent Judgment shall be in full force and  
15 effect for twenty-four (24) months following its entry.

16 C. PROVISIONS

17 The following terms of the Consent Judgment will be effective immediately upon  
18 entry of the Judgment unless otherwise indicated:

- 19 1. During such time as the Cooperative is a program of the Office of the  
20 Superintendent, the Superintendent shall be solely responsible for the  
21 governance, supervision and oversight of the Cooperative.
- 22 2. The Superintendent shall comply with A.R.S. § 15-365 with respect to all  
23 CPAs, SPAs and PAs.
- 24 3. The County, the Cooperative, and the Superintendent shall not assign, sell or  
25 transfer any interest in any asset or any CPA, SPA or PA to a Successor  
26 unless the Successor agrees in writing to be bound by the terms of this  
Consent Judgment.

- 1 4. All entities engaging in cooperative purchasing pursuant to a CPA, SPA, or a  
2 PA (including those entities in Mohave County and New Mexico) shall be  
3 charged administrative fees that are based on use.
- 4 5. Effective January 1, 2005, unless specifically exempted by the Board, at all  
5 times while a program of the office of the Superintendent, the Cooperative  
6 shall adhere to Mohave County rules in general, and specifically, the Mohave  
7 County operational rules and regulations, Mohave County Merit System  
8 Rules, Mohave County Purchasing Policy, and the Uniform Accounting  
9 Manual for Arizona Counties, including but not limited to, travel and expense  
10 reimbursement policies.
- 11 6. On or before December 15, 2004, the Superintendent, on behalf of the  
12 Cooperative, shall receive a certification from the Mohave County Attorney  
13 that real property currently titled in the name of MESC is titled and insured  
14 and in escrow to be transferred to and in the name of and for the benefit of the  
15 Cooperative or a Successor and shall deliver that certification to the AG. All  
16 such transfers or disclaimers of interest in real property shall be approved by  
17 the Mohave County Board of Supervisors and the Mohave County Attorney.  
18 A quitclaim deed quitclaiming all of Mohave County's interest in such real  
19 property approved by the Mohave County Board of Supervisors and the  
20 Mohave County Attorney may satisfy the requirements of this paragraph.
- 21 7. All future procurements of the Cooperative shall comply with procurement  
22 laws applicable to each PPU participating in a cooperative purchasing  
23 transaction with the Cooperative and, at a minimum, shall meet the following  
24 requirements:
- 25 a. Invitations for bid must be used unless a representative of the  
26 Cooperative documents in writing that the use of competitive sealed  
bidding is either not practicable or advantageous and identified the

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- specific reason for such determination as allowed in A.A.C. R7-2-1041.
  - b. Request for proposals must state the relative importance of price and other evaluation factors.
  - c. Contract awards must be limited to the least number of suppliers determined necessary. For all multiple awards, prior to the award, the Cooperative shall document in writing that a single award is not advantageous, including the reasons why it is not advantageous.
  - d. The evaluation process must be documented and demonstrate how the awarded contract is most advantageous to the member based on factors set forth in the request for proposal. No other factors or criteria may be used in the evaluation.
8. No new contract arising from what was identified by the OAG to be unauthorized procurement practices may be entered into unless such procurement for the same types of services, equipment and materials complies with the law applicable to the PPU's when issued and awarded.
9. The Cooperative shall clearly state, on its website and in its member agreements, vendor contracts and other materials, that it is the independent responsibility of the member or purchasers to verify that purchase orders comply with the terms of the award of a contract or procurement.
10. The Cooperative disputes the amount of its liability arising from the OAG's list of overcharges that are identified in Exhibit B. Nonetheless, the Cooperative agrees that, within 90 days of entry of this Consent Judgment, the Cooperative shall pay the State of Arizona \$175,306.00 to be distributed to those entities identified by the OAG in Exhibit B.
11. The Cooperative disputes the amount of its liability arising from the OAG's list of discounts that should have been paid to members that are identified in

1 Exhibit C. Nonetheless, the Cooperative agrees that, within 90 days of entry  
2 of this Consent Judgment, the Cooperative shall pay the State of Arizona  
3 \$3998.00 to be distributed to those entities identified by the OAG in Exhibit  
4 C.

5 12. Within 90 days of entry of this Consent Judgment, the Cooperative shall  
6 develop and implement procedures to ensure that it fully communicates its  
7 quick pay discount policy to vendors, members and the public. The  
8 Cooperative shall submit a copy of the procedures for approval by the AG.

9 13. Within 90 days after entry of this Consent Judgment, the Cooperative or, in  
10 the event the Cooperative is not longer doing business, Successor(s), shall  
11 meet with representatives from the AG and insurance companies or trusts  
12 incurring transactions of the Cooperative or, if applicable, Successor(s), to  
13 identify procedures that ensure that members have appropriate redress when  
14 the contract is breached or the equipment or services acquired from the  
15 vendor is defective. Within 180 days after entry of the Consent Judgment, the  
16 Cooperative shall incorporate those terms identified into all contracts with  
17 vendors.

18 14. The Cooperative shall coordinate with the OAG to competitively procure and  
19 hire, at the Cooperative's expense, an independent auditor for a review of the  
20 Cooperative's procurement practices during the term of this Order. The scope  
21 of this review shall be approved by the OAG and shall include, at a minimum,  
22 verification that the Cooperative's practices, policies and procedures for (1)  
23 contract price disclosure and purchase order verification and (2)  
24 determination of discounts are properly administered. All findings shall be  
25 reported and information gathered by the contracted auditors shall be made  
26 available to the OAG. This review will be conducted for four consecutive  
six-month periods beginning January 1, 2005.

- 1 15. The Cooperative shall only charge parties to CPAs, SPAs or PAs those fees  
2 or costs allowed by law.
- 3 16. The Superintendent and the Cooperative agree that the special review  
4 conducted by the OAG is properly within the scope of the OAG's discretion,  
5 powers and duties and that the review has identified changes to the operation,  
6 practices and procedures of the Cooperative that are appropriate and  
7 necessary, which changes the Superintendent and the Cooperative have  
8 agreed to implement in this agreement. The parties acknowledge that, in the  
9 period of time during and since the OAG's review of its operations and  
10 practices commenced, the Cooperative corrected some of the procurement  
11 problems cited in the review that gives rise to this Consent Judgment.
- 12 17. The Superintendent and the Cooperative shall submit to the AG evidence of  
13 compliance with the terms of this Consent Judgment.
- 14 18. The Cooperative shall prominently post a link on its web page to this Consent  
15 Judgment for 12 months following entry of the judgment.
- 16 19. The Cooperative shall self-report any substantive violation of the Judgment to  
17 the AG within five (5) business days of discovery of any violation. Further,  
18 the Cooperative shall develop a reporting procedure to facilitate the required  
19 self-report. The reporting procedure shall be submitted to the AG for  
20 approval within 60 days after the entry of this Order.
- 21 20. The Superintendent, the Cooperative, Successors, Assigns, and the  
22 Employees shall fully cooperate in the Attorney General's enforcement of the  
23 Consent Judgment and in any investigation or civil or criminal action  
24 concerning acts or practices of the Superintendent, the Cooperative,  
25 Successors, or Assigns.
- 26 21. The Cooperative shall cease to operate if any term of this Order is not  
complied with within 10 days after entry of this Judgment or, if a longer time

1 period is allowed for compliance, within that period.

2 22. The Attorney General, the Auditor General or any independent auditor, on  
3 reasonable notice to the Cooperative, shall be permitted, subject to the  
4 reasonable convenience of the Cooperative, and without the Cooperative's  
5 restraint or interference:

6 a. access during office hours to inspect and copy all books, ledgers,  
7 accounts, correspondence, memoranda and other record and documents  
8 in the possession or under the control of the Cooperative, relating to  
9 any matters raised or that could have been raised in the Complaint or in  
10 this Consent Judgment; and

11 b. access to interview employees and agents of the Cooperative.

12 The requirements set forth in this paragraph are in addition to any requirements  
13 of A.R.S. § 41-2642.

14 23. Upon request of the AG, the Cooperative shall submit such written reports,  
15 under oath if requested, with respect to any of the matters contained in this  
16 Consent Judgment as may be identified in the request.

17 24. Nothing contained herein shall limit the rights of the State pursuant to its civil  
18 investigative authority.

19 25. The Consent Judgment constitutes a full and complete release of the State and  
20 the Auditor General and any independent auditors of the Superintendent and  
21 the Cooperative with respect to the claims set forth in the Complaint.

22 26. The Superintendent and the Cooperative shall not engage in any conduct  
23 prohibited by the Arizona Procurement Code, A.R.S. § 41-2501 *et seq.*, the  
24 Arizona Education Act, A.R.S. § 15-101 *et seq.*, the Education Procurement  
25 Code, A.A.C. R7-2-1001, *et seq.*, the Auditor General's Uniform System of  
26 Financial Records, (U.S.F.R.), County policies and procedures (including, but  
not limited to the Uniform Accounting Manual for Arizona Counties), or any

1 procurement rules or regulations adopted by the State for political  
2 subdivisions.

3 D. SETTLEMENT OF CLAIMS

4 The payment and performance as provided herein shall be, upon completion, in  
5 settlement of all claims the State may have against the Superintendent, the Cooperative,  
6 its employees, agents and assigns arising out of the conduct that is the basis for the  
7 State's Complaint in this action.

8 E. REMEDY ON DEFAULT

9 In the event the Superintendent or the Cooperative, through the action of any  
10 employee or affiliate, violates any provision of this Consent Judgment, the State may  
11 move this Court for an order finding the Superintendent or the Cooperative in default,  
12 upon affidavits stating the factual grounds therefore.

13 F. RETENTION OF JURISDICTION

14 Jurisdiction is retained by this Court for the purpose of enabling the State and the  
15 Superintendent or the Cooperative to apply to the Court at any time for such further  
16 orders and directions as may be necessary or appropriate for the construction or  
17 implementation of any of the provision of this Consent Judgment, for the enforcement or  
18 compliance herewith, and for the punishment of any violations hereof. Nothing in this  
19 provision shall give standing to any person not a party to the Consent Judgment to seek  
20 any relief related to it.

21 G. AGREEMENT OF THE PARTIES

22 The State and the Superintendent have stipulated to entry of this Consent  
23 Judgment. All prior oral or written agreements, commitments or understandings with  
24 respect to the matters provided for herein are hereby set aside and no evidence of these  
25 shall be admissible in any proceeding for any purpose absent written consent of all  
26 parties to this Consent Judgment.

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H. HEADINGS

Article headings contained in this Consent Judgment are inserted for convenience of reference only, and shall not be deemed to be part of this Consent Judgment for any purpose, and shall not in any way define or affect the meaning, construction or scope of any of the provisions of it.

DATED this 9 day of Nov. 2004.

KENNETH L. FIELDS

\_\_\_\_\_  
Judge, Maricopa County Superior Court



**EXHIBIT "A"**



Jennings  
Strouss

Jennings, Strouss & Salmon, P.L.C.  
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201 East Washington Street  
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October 13, 2004

Susan Plimpton Segal, Esq.  
Office of the Attorney General  
1275 W. Washington  
Phoenix, Arizona 85007-2997

Re: Mohave County Educational Services Cooperative Consent Judgment

Dear Susan:

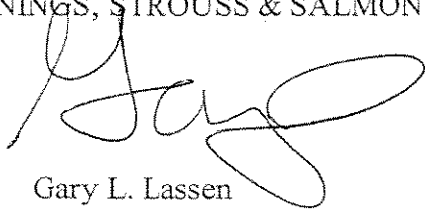
Pursuant to our understanding of the terms of settlement, the purpose of this letter is to designate the key employees of Mohave County Educational Services Cooperative. For purposes of the provisions contained in the Consent Judgment. Those persons are:

James Migliorino  
Tom Peeler  
Gary Bowen  
Michael File

Very truly yours,

JENNINGS, STROUSS & SALMON, P.L.C.

By

  
Gary L. Lassen

GLL/jah

**EXHIBIT "B"**

Mohave Educational Services Cooperative  
Amount Overcharged to Certain Members  
Exhibit B

Member	Purchase Order	Amount Member was Overcharged
Camp Verde USD #28	71386	1,277
Ray USD #3	74280	9,545
Sacaton ESD #18	75419 & 83953	40,545
Prescott USD #1	80003	10,650
Globe USD #1	80097	13,691
Fort Thomas USD #7	80507	2,100
Sonoita ESD #25	80897	66,081
Shonto Preparatory School	84507	15,540
Bagdad USD #20	90053	9,877
		<u>\$ 175,306</u>

**EXHIBIT "C"**

Mohave Educational Services Cooperative  
Amount Overcharged to Certain Members  
Exhibit C

Member	Purchase Order	Amount Member was Overcharged
Alhambra SD #68	90823 & 86312	72
Snowflake USD #5	91599	70
Avondale ESD #44	92979	1,337
Gilbert USD #41	96056	1,574
Tempe UHSD #213	82549	90
Kyrene ESD #28	83361	785
City of Yuma	83421	71
		<u>\$ 3,998</u>