

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
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May 16, 2013

Via E-mail and U.S. Mail

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Re: *Regents of the University of California v. AFSCME Local 3299*
Injunctive Relief Request No. 635
Unfair Practice Charge No. SF-CO-186-H

Re: *Regents of the University of California v. UPTE-CWA Local 9119*
Injunctive Relief Request No. 636
Unfair Practice Charge No. SF-CO-187-H

Dear Parties:

By direction of the Board, the requests for injunctive relief in the above-entitled matters are GRANTED, in part. By further direction of the Board, the General Counsel shall immediately initiate an action for appropriate injunctive relief in Sacramento County Superior Court, as set forth in the enclosed Complaint for Injunctive Relief.

Sincerely,

M. Suzanne Murphy
General Counsel

Encl.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On May 16, 2013, I served the Letter regarding Case Nos. SF-CO-186-H and SF-CO-187-H on the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

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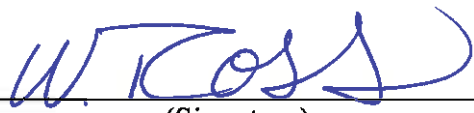
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 16, 2013, at Sacramento, California.

W. Ross

(Type or print name)



(Signature)

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9 Attorneys for State of California,
10 PUBLIC EMPLOYMENT RELATIONS BOARD

11 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA

12 COUNTY OF SACRAMENTO

13
14 PUBLIC EMPLOYMENT RELATIONS
BOARD,

15 Plaintiff,

16 v.

17 AFSCME LOCAL 3299 and UPTE-CWA
18 LOCAL 9119,

19 Defendants.

20 REGENTS OF THE UNIVERSITY OF
21 CALIFORNIA,

22 Real Party in Interest.

Case No.: _____

**COMPLAINT FOR INJUNCTIVE
RELIEF**

[Code Civ. Proc., §§ 526 & 527;
Gov. Code, § 3563, subd. (i)]

**Exempt from Fees
(Gov. Code, § 6103)**

1 TO THE HONORABLE COURT, CLERK OF THE COURT, AND ALL PARTIES:

2 Comes now Plaintiff California Public Employment Relations Board (PERB or Board),
3 and alleges a claim for injunctive relief regarding a strike by employees who are represented for
4 purposes of collective bargaining by defendants AFSCME Local 3299 and UPTE-CWA Local
5 9119, and employed at the five University of California (UC) Medical Centers, **a strike of which**
6 **the University has had more than ten days advance notice, which is set to begin at 4:00 a.m.**
7 **on Tuesday, May 21, 2013, and to conclude by 4:00 a.m. on Thursday, May 23, 2013,** and
8 may involve certain “essential” employees whose participation in the strike may create a
9 substantial and imminent threat to the health or safety of the public under the test established by
10 the California Supreme Court in *County Sanitation Dist. No. 2 v. Los Angeles County Employees*
11 *Ass’n* (1985) 38 Cal.3d 564 (*County Sanitation*):

12 **Parties**

13 1. PERB is now and at all times mentioned herein has been an administrative agency
14 created by Government Code section 3541, for the purpose of, inter alia, promoting the
15 development of harmonious and cooperative labor relations between California’s public-sector
16 employers and their employees. Included among the statutory collective bargaining schemes
17 administered by PERB is the Higher Education Employer-Employee Relations Act (Gov. Code,
18 § 3560 et seq. [HEERA]),¹ which governs labor relations between California’s higher-education
19 employers and their employees. PERB has the power to petition the Superior Court for
20 injunctive relief upon issuance of an administrative complaint charging that an employer or
21 employee organization has engaged or is engaging in an unfair practice. (§ 3563, subd. (i); see
22 also, Cal. Code Regs., tit. 8, § 32450 et seq.)²

23 2. As a public agency, PERB is not required to file a bond or undertaking (Code Civ.
24 Proc., § 529, subd. (b)(3)) when requesting injunctive relief.

25 3. As a public agency, PERB is not required to pay a filing fee. (§ 6103.)

26 _____
27 ¹ All further undifferentiated references to statutes are to the Government Code.

28 ² All further citations to provisions of the California Code of Regulations, title 8, will use
the shorthand “PERB Regulation,” followed by section and subsection numbers as appropriate.

1 first resort that is capable of granting relief to PERB, and because AFSCME, UPTE, and the
2 University have offices within the County of Sacramento.

3 **The Parties' Recent Collective Bargaining History and Strike Notices**

4 9. AFSCME and the University are signatories to a Memorandum of Understanding
5 (MOU) for the EX bargaining unit, which covers approximately 13,000 Patient Care Technical
6 (PCT) employees in various classifications—including licensed vocational nurses (LVNs),
7 laboratory technicians, radiologic technicians, pharmacy technicians, and respiratory therapists.
8 Most of the employees in the EX unit work at the five UC Medical Centers; a small number of
9 EX employees work at UC's academic campuses. There are no registered nurse (RN) or
10 physician classifications in the EX unit. A description of the demographics and a full list of
11 classifications in the EX unit, along with applicable wage schedules, are available on UC's
12 website.³

13 10. The most recent MOU between AFSCME and UC covering the EX unit expired
14 on September 30, 2012. (Declaration of Wendi L. Ross [Ross Decl.], Volume [Vol.] IV, Exh. F
15 [Patel Decl., ¶4]; Ross Decl., Vol. XIII, Exh. S [Fishel Decl. ¶2].)⁴ That MOU contained a no-
16 strike clause, which expired along with the MOU on September 30, 2012.

17 11. AFSCME and the University began bargaining over a successor MOU for the EX
18 unit in May 2012. On December 10, 2012, at AFSCME's request, PERB determined that an
19 impasse warranting appointment of a mediator existed, in PERB Case No. SF-IM-2973-H. (Ross
20 Decl., Vol. IV, Exh. F [Patel Decl., ¶11]; Ross Decl., Vol. XIII, Exh. S [Fishel Decl. ¶5].) The
21 parties engaged in mediation under the auspices of the State Mediation and Conciliation Service
22 (SMCS) until February 12, 2013, when the parties were released to factfinding. (Ross Decl.,
23 Vol. IV, Exh. F [Patel Decl., ¶12].) Following a hearing before the factfinding panel, a report
24

25 ³http://atyourservice.ucop.edu/employees/policies_employee_labor_relations/collective_bargaining_units/index.html

26 ⁴ All declarations filed by UC, AFSCME and UPTE are attached to the Ross Declaration
27 that will be filed with PERB's Ex Parte Application for a Temporary Restraining Order and
28 Order to Show Cause re: Preliminary Injunction. Attached to the Ross Declaration are
alphabetical listings of all declarations.

1 was issued on March 29, 2013. (Ross Decl., Vol. IV, Exh. F [Patel Decl., ¶15]; Ross Decl., Vol.
2 XIII, Exh. S [Fishel Decl. ¶8].) Subsequently, the parties met for several post-factfinding
3 negotiations sessions.

4 12. As of April 25, 2013, AFSCME and UC had reached tentative agreement on 19
5 articles of the MOU, but did not reach agreement on 25 remaining open articles and, thus, did not
6 reach complete agreement on a successor MOU. (Ross Decl., Vol. IV, Exh. F [Patel Decl., ¶¶19-
7 21].) As of that date, AFSCME declared that the parties are at impasse. (Ross Decl., Vol. IV,
8 Exh. F, [Patel Decl., ¶23 & Ex. 2]; Ross Decl., Vol. XIII, Exh. S [Fishel Decl. ¶11].)

9 13. On or about April 9, 2013, AFSCME notified its members of a strike
10 authorization vote for the EX unit, which was to be and was conducted from April 30 through
11 May 2, 2013. AFSCME members voted 97% in favor of authorizing the AFSCME leadership to
12 call a strike if and when it deemed such action necessary. The results of the strike authorization
13 vote were made public on or about May 2, 2013. On or about May, 10, 2013, AFSCME, through
14 its officers, agents, representatives, and/or members, and acting in concert with them, gave the
15 University formal notice of its intent for EX unit members to engage in a **48-hour strike at each**
16 **of the University's medical facilities** (hereafter UC Medical Centers) in California—including
17 UC San Francisco Medical Center, UC Davis Medical Center, UC Los Angeles Medical Center,
18 UC Irvine Medical Center, and UC San Diego Medical Center—beginning at **4:00 a.m. on**
19 **Tuesday, May 21, 2013 and concluding at 4:00 a.m. on Thursday, May 23, 2013.** (Ross
20 Decl., Vol. XI, Exh. L [Felson Decl., ¶6].)

21 14. AFSCME and the University are also signatories to an MOU for the SX
22 bargaining unit, which covers approximately 7,000 University Service employees in various
23 classifications—including janitors and cafeteria workers. (Ross Decl., Vol. XVII, Exh. W
24 [Fishel Decl. ¶2].) Most of the employees in the SX unit work at the five UC Medical Centers;
25 other SX employees work at UC's academic campuses.

26 15. The most recent MOU for the SX bargaining unit expired on January 31, 2013.
27 (Ross Decl., Vol. XVII, Exh. W [Fishel Decl. ¶2].) That MOU contained a no-strike/no-
28 sympathy strike clause, which expired along with the MOU on January 31, 2013.

1 16. AFSCME and the University commenced negotiations for a successor MOU for
2 the SX unit in or about October 2012. (Ross Decl., Vol. XVII, Exh. W [Fishel Decl. ¶3].) On
3 April 19, 2013, UC asked PERB to determine whether an impasse warranting appointment of a
4 mediator existed, which it did on April 25, 2013, in PERB Case No. SF-IM-2997-H. (Ross
5 Decl., Vol. XVII, Exh. W [Fishel Decl. ¶14].) As of May 3, 2013, a mediator was assigned by
6 SMCS, and mediation sessions are scheduled for May 31, June 10 and June 11, 2013. (Ross
7 Decl., Vol. XVII, Exh. W [Fishel Decl. ¶15].)

8 17. On or about May, 10, 2013, AFSCME through its officers, agents,
9 representatives, and/or members, and acting in concert with them, gave the University formal
10 notice of its intent for SX unit members to engage in a **48-hour sympathy strike from 4:00**
11 **a.m. on Tuesday, May 21, 2013 until 4:00 a.m. on Thursday, May 23, 2013, at the same**
12 **locations as the EX unit strike.** (Ross Decl., Vol. XI, Exh. L [Felson Decl., ¶6].)

13 18. UPTE and the University are signatories to an MOU for the HX bargaining unit,
14 which covers approximately 3,300 University employees—including Clinical Laboratory
15 Scientists, Pharmacists, and Social Workers. Most of the employees in the HX unit work at the
16 five UC Medical Centers; other HX employees work at UC’s academic campuses. There are no
17 RN or physician classifications in the SX unit.

18 19. The most recent MOU for the HX bargaining unit expired on February 17, 2012.
19 (Ross Decl., Vol. XIV, Exh. T [DiGrazia Decl., ¶4].) That MOU contained a no-strike/no-
20 sympathy strike clause, which expired along with the MOU on February 17, 2012.

21 20. UPTE and the University commenced negotiations for a successor MOU for the
22 HX unit on or about October 5, 2011. (Ross Decl., Vol. XIV, Exh. T [DiGrazia Decl., ¶5].) On
23 April 22, 2013, at UC’s request, PERB determined that an impasse existed as to bargaining for a
24 successor MOU for the HX unit in PERB Case No. SF-IM-2995-H. (Ross Decl., Vol. XIV, Exh.
25 T [DiGrazia Decl., ¶6]; Ross Decl., Vol. XI, Exh. L [Felson Decl., ¶5].) As of May 1, 2013, a
26 mediator was assigned by SMCS.

27 21. On or about May, 10, 2013, UPTE through its officers, agents, representatives,
28 and/or members, and acting in concert with them, gave the University formal notice of its intent

1 for HX unit members to engage in a **24-hour sympathy strike beginning at 4:00 a.m. on**
2 **Tuesday, May 21, 2013, and concluding at 4:00 a.m. on Wednesday, May 22, 2013 at the**
3 **same locations noticed for the EX unit strike.** (Ross Decl., Vol. XI, Exh. L [Felson Decl.,
4 ¶6].) PERB is informed and believes that no strike authorization vote of HX members was
5 required or held.

6 22. On or about May 10, 2013, and continuing to date, AFSCME and UPTE, through
7 their officers, agents, representatives, and/or members, and acting in concert with them, have
8 called for, authorized, assisted, encouraged, sanctioned, condoned, provided support to, and
9 caused their members in the EX, HX, and SX units—including certain allegedly “essential”
10 employees whose absence from or refusal to work during the strike may pose an imminent and
11 substantial threat to the public health and safety—to withdraw their services for and during the
12 strike to commence on May 21, 2013.

13 **Operations of the Five Medical Centers**

14 23. Because the nature of the services provided at the five UC Medical Centers is
15 important to an understanding of the legal issues presented in this case, a brief summary of these
16 operations is included here, along with information about other comparable private and public
17 hospitals and medical centers in the geographic regions served by the UC Medical Centers.

18 24. The UC Davis Medical Center, located in Sacramento, California, is the only
19 adult and pediatric Level One trauma center in the geographic region from Merced north to the
20 Oregon border. (Ross Decl., Vol. XIII, Exh. S [Robinson Decl. ¶5]; Ross Decl., Vol. XIII, Exh.
21 S [Siefkin Decl. ¶¶5, 15].) However, there are five Level Two trauma centers in the same
22 region, including three in the Sacramento area. (Ross Decl., Vols. IX-X, Exh. K [Preparata
23 Decl., ¶29; Ex. 23].) UC Davis Medical Center also includes a Burn Center, which averages 14
24 patients per day, and is the primary referral hospital for rural hospitals in Northern California for
25 such care. (Ross Decl., Vol. XIII, Exh. S [Robinson Decl. ¶10]; Ross Decl., Vol. XIII, Exh. S
26 [Siefkin Decl. ¶14].) UC Davis has, on average, a total of 437 occupied beds per day. (Ross
27 Decl., Vol. I, Exh. D [UJR, pp. 54-55]; Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex.
28 34].) However, the number of empty licensed beds *in each care category* at other nearby

1 facilities far exceeds the total bed capacity at UC Davis, *except for its Burn Center*. (Ross Decl.,
2 Vol. I, Exh. D [UJR, pp. 54-55]; Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 34].)
3 Other comparable, nearby hospitals include Mercy San Juan Hospital and Kaiser Hospital, both
4 Level Two trauma centers in Sacramento County. (Ross Decl., Vol. I, Exh. D [UJR, pp. 48];
5 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶29].)

6 25. The UC Irvine Medical Center is the only Level One trauma center in Orange
7 County. (Ross Decl., Vol. XIII, Exh. S [Grimley Decl., ¶4].) However, there are two Level Two
8 trauma centers in Orange County and a Level One trauma center in nearby Long Beach. (Ross
9 Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶29; Ex. 23].) UC Irvine Medical Center provides a
10 high level of indigent care (Ross Decl., Vol. XIII, Exh. S [Grimley Decl., ¶10]), has a specialized
11 burn center (Ross Decl., Vol. XIII, Exh. S [Grimley Decl. ¶4]), and receives transfer patients
12 from other hospitals (Ross Decl., Vol. XIII, Exh. S [Grimley Decl., ¶10]). UC Irvine Medical
13 Center has, on average, a total of 283 occupied beds per day. (Ross Decl., Vol. I, Exh. D [UJR,
14 pp. 53-54]; Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 33].) However, the number of
15 empty licensed beds available *in each care category* at other nearby facilities far exceeds the
16 total bed capacity at UC Irvine Medical Center, *except for its Burn Center*. (Ross Decl., Vol. I,
17 Exh. D [UJR, pp. 53-54]; Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 33].) Other
18 comparable, nearby hospitals include Long Beach Memorial Medical Center (a Level One
19 trauma center). (Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶29].)

20 26. The UCLA Medical Center is one of four Level One trauma centers in Los
21 Angeles County. (Ross Decl., Vol. XIII, Exh. S [Rosenthal Decl., ¶¶2, 3]; Ross Decl., Vols. IX-
22 X, Exh. K [Preparata Decl., ¶29; Ex. 23].) UCLA Medical Center is a cutting-edge research
23 center, performs some highly specialized acute care services, and is a large organ transplant
24 center. (Ross Decl., Vol. XIII, Exh. S [Rosenthal Decl., ¶2].) UCLA Medical Center has, on
25 average, a total of 654 occupied beds per day. (Ross Decl., Vol. I, Exh. D [UJR, pp. 50-51];
26 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 30].) However, the number of empty
27 licensed beds available *in each care category* at other nearby facilities far exceeds the total bed
28 capacity at UCLA Medical Center. (Ross Decl., Vol. I, Exh. D [UJR, pp. 50-51]; Ross Decl.,

1 Vols. IX-X, Exh. K [Preparata Decl., Ex. 30].) Other comparable, nearby hospitals include
2 USC's Keck Medical Center and Cedars-Sinai Hospital (a Level One adult trauma center).
3 (Ross Decl., Vol. I, Exh. D [UJR, pp. 28]; Ross Decl., Vol. IV, Exh. G [Perlman Decl., Ex. 4];
4 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶29].)

5 27. The UC San Diego Medical Center is one of two Level One trauma centers in San
6 Diego County. (Ross Decl., Vol. XIII, Exh. S [Baggett Decl., ¶4]; Scioscia Decl., ¶4; Ross
7 Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶29; Ex. 23].) It is the only hospital in the County
8 for lung transplants, and also performs other types of organ transplant operations, although such
9 surgeries are generally not performed on an emergent basis. (Ross Decl., Vol. XIII, Exh. S
10 [Baggett Decl., ¶9]; Ross Decl., Vol. XIII, Exh. S [Scioscia Decl., ¶3].) UC San Diego Medical
11 Center serves a high level of indigent care, including high-risk childbirths. (Ross Decl., Vol.
12 XIII, Exh. S [Baggett Decl. ¶5, 6]; Ross Decl., Vol. XIII, Exh. S [Scioscia Decl. ¶2].) It has, on
13 average, a total of 416 occupied beds per day. (Ross Decl., Vol. I, Exh. D [UJR, pp. 52-53];
14 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 32].) However, the number of empty
15 licensed beds available *in each care category* at other nearby facilities far exceeds the total bed
16 capacity at UC San Diego Medical Center, *except for the Burn Center and Acute Respiratory*
17 *Care unit*. (Ross Decl., Vol. I, Exh. D [UJR, pp. 52-53]; Ross Decl., Vols. IX-X, Exh. K
18 [Preparata Decl., Ex. 32].) Other comparable, nearby hospitals include Scripps Mercy Hospital
19 (a Level One trauma center) and Rady Children's Hospital (Pediatric Level Two). (Ross Decl.,
20 Vols. IX-X, Exh. K [Preparata Decl., ¶29].) A strike at UC San Diego Medical Center would
21 force a temporary closure of numerous operating rooms and reduce the number of transfer
22 patients it could accept. (Ross Decl., Vol. XIII, Exh. S [Scioscia Decl., ¶10, 11].)

23 28. The UCSF Medical Center is not a Level One trauma center, and the Bay Area is
24 served by several other hospitals that serve as Level One and Level Two trauma centers. (Ross
25 Decl., Vols. IX-X, Exh. K [Preparata Decl., ¶31].) UCSF Medical Center supplies respiratory
26 therapists and anesthesia technicians to San Francisco General Hospital, which is the only Level
27 One trauma center on the San Francisco peninsula (Ross Decl., Vol. XIII, Exh. S [Schreibman
28 Decl., ¶4]), and the primary local facility for indigent patients (Ross Decl., Vol. XIII, Exh. S

1 [Schreibman Decl., ¶¶ 3, 5]). UCSF Medical Center operated as a private hospital between 1997
2 and 2000 due to a merger with Stanford, then reverted to operation as a public hospital. (Ross
3 Decl., Vol. I, Exh. D [UJR, pp. 5]; Ross Decl., Vols. XI-XII, Exh. M [Clark Decl., ¶14].) It
4 averages a total of 495 occupied beds per day. (Ross Decl., Vol. I, Exh. D [UJR, pp. 51-52];
5 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl., Ex. 31].) However, the number of empty
6 licensed beds available *in each care category* at other nearby facilities far exceeds the total bed
7 capacity at UCSF Medical Center. (Ross Decl., Vol. I, Exh. D [UJR, pp. 51-52]; Ross Decl.,
8 Vols. IX-X, Exh. K [Preparata Decl., Ex. 31].) Other comparable, nearby hospitals include
9 Stanford Medical Center (a Level One trauma center). (Ross Decl., Vol. I, Exh. D [UJR, p. 48];
10 Ross Decl., Vols. IX-X, Exh. K [Preparata Decl. ¶29].)

11 **AFSCME's and UPTE's Requests for Information, in**
12 **Anticipation of Injunctive Relief Requests by UC Seeking to Prohibit**
13 **"Essential Employees" From Striking in the EX, SX, and HX Bargaining Units**

14 29. Sections 3570 and 3571.1, require higher-education employers and employee
15 organizations to meet and negotiate in good faith over matters within the scope of representation,
16 and to participate in good faith in PERB's impasse procedures, including mediation and
17 factfinding. Failure or refusal by a higher-education employer to do so constitutes an unfair
18 practice under sections 3571, subdivision (c). Included within the employer's duty to meet and
19 negotiate in good faith is an obligation to provide an exclusive representative of its employees,
20 upon request, all information that is "necessary and relevant" to the discharge of its duty of
21 representation. Failure or refusal to provide such information is a per se violation of the
22 employer's duty to bargain in good faith.

23 30. On or about March 20, 2013, AFSCME and UPTE requested numerous items of
24 information that they claimed to be relevant and necessary to the discharge of their duties to
25 represent employees, including, but not limited to: (1) contingency plans pertaining to a strike or
26 work stoppage at any University medical centers(s), including but not limited to plans for
27 reduction in patient census, diversion of patients, transfer of patients, postponement of care,
28 closure of certain operations, and replacement of striking workers; (2) any and all agreements
currently in effect between the University and any entity that offers to supply replacement

1 workers in the event of a strike, including but not limited to Healthsource Global Staffing; (3)
2 inquiries, orders, emails or requests, as well as any answers thereto, regarding temporary or
3 replacement employees for any classifications in the EX, SX, or HX bargaining units made to
4 any registry, provider of temporary labor, or strike staffing agency, or any other outside staffing
5 agency of any kind in anticipation of any strike by AFSCME in 2005, 2008 or 2013; (4)
6 inquiries, orders, emails, or requests, as well as any answers thereto, regarding temporary
7 employees for any classifications in the EX, HX, or SX bargaining units made to any registry,
8 provider of temporary labor or outside staffing agency of any kind in 2012 or 2013; (5) records
9 of all deposits or payment paid to any strike replacement agency, including but not limited to
10 Healthsource Global Staffing, for replacement employees for any classifications in the EX, SX,
11 or HX bargaining units; (6) records and information showing “minimum staffing” for employees
12 in those classifications/titles at each UC Medical Center on regular weekdays, weekends, and
13 key holidays; (7) for any AFSCME- or UPTE-represented job classifications at each UC Medical
14 Center that UC claims should be wholly or partially prohibited from striking in order to protect
15 the public from alleged imminent and substantial threats to the public health and safety, and
16 records and information showing the full names and titles of all University employees *not*
17 represented by AFSCME who could partially or fully cover for employees in the relevant EX,
18 HX, or SX classifications; (8) a complete list of any and all AFSCME- and UPTE-represented
19 job classifications, titles, or employees that should be wholly or partially prohibited from
20 participating in a strike in order to protect the public from alleged imminent and substantial
21 threats to the public health and safety, including the number of employees in each classification
22 or job title that should be prohibited from striking for each shift during a strike, the specific work
23 areas where such employees should be required to work during a strike, and an explanation of
24 the extent to which any claimed need for these employees during a strike can be mitigated or
25 reduced by a reduction in patient census, diversion or transfer of patients, postponement of care,
26 closure of certain operations before or after a strike, use of supervisory, managerial,
27 administrative and other non-AFSCME-represented staff to fill in during a strike, use of nurses,
28 doctors, fellows, residents, or medical students to perform certain functions, and the use of

registries, temporary agencies travelers, and staff recruited by striker replacement companies.

31. On or about March 25, 2013, the University refused to provide the information described in paragraph 29, claiming that it had no legal obligation to do so. (See Ross Decl. Vols. II-III, Exh. E [¶4, Exh. 4].)

32. On or about April 26, 2013, outside counsel for the University, Tim Yeung of the Renne Sloan law firm, provided the Unions with a partial response to their information requests, which consisted of a chart that listed the classifications that the University had deemed “essential” in a strike by AFSCME in 2008, along with some additional classifications it currently claims to be “essential. (Ross Decl., Vols. II-III, Exh. E [¶9, Exh. 5].)

33. On or about May 1, 2013, the Unions filed with PERB two unfair practice charges (UPCs), Nos. SF-CE-1029-H and SF-CE-1030-H, alleging that the University failed and refused to meet and confer in good faith with them in violation of Government Code section 3571, subdivision (c), and interfered with the rights of bargaining unit employees to be represented by the Unions in violation of Government Code section 3571, subdivision (a), by refusing to provide information necessary and relevant to its ability to carry out its representational duties. (Ross Decl., Vol. I, Exhs. A, B.)

34. Also on May 1, 2013, having not received the bulk of the requested information from the University, the Unions filed a Joint Position Statement and Request (UJR), asking the Board to: expedite administrative proceedings on UPC Nos. SF-CE-1029-H and SF-CE-1030-H; to consolidate those charges with anticipated charges to be filed by the University in conjunction with a request for injunctive relief (IR Request) as to a possible strike by “essential employees” in the EX, SX, and HX units at the five UC Medical Centers; and to transfer all of the pending and anticipated charges to be heard and decided by the Board itself in the first instance. The voluminous filing in support of this motion (one full banker’s box) was accompanied by an 82-page brief, and more than 100 declarations in support of the Unions’ position that the requested information was necessary and relevant to prepare for and defend against the anticipated IR Requests. (Ross Decl., ¶2, Vol. I, Exhs. C-D; Vols. II-XII.)

35. On or about May 13, 2013, the Board denied the Unions’ request to hear and

1 determine UPC Nos. SF-CE-1029-H and SF-CE-1030-H in the first instance, and referred the
2 balance of the UJR to the General Counsel's office for consideration in the course of her
3 investigation into those charges. (Ross Decl., Vol. XVII, Exh. V.)

4 36. On or about May 16, 2013, PERB's General Counsel issued administrative
5 complaints on UPC Nos. SF-CE-1029-H and SF-CE-1030-H. (Ross Decl., Vol. XVIII, Exh.
6 BB.)

7 **UC's Unfair Practice Charges and Requests for Injunctive Relief to Enjoin the Noticed**
8 **Strike in the EX Unit and the Noticed Sympathy Strikes in the SX and HX Units**

9 37. Sections 3570 and 3590 et seq., require higher-education employers and employee
10 organizations to meet and negotiate in good faith over matters within the scope of representation,
11 and to participate in good faith in PERB's impasse procedures under HEERA, including
12 mediation and factfinding. Failure or refusal by an employee organization to do so constitutes an
13 unfair practice under sections 3571.1, subdivision (c), and/or 3571.1, subdivision (d).

14 38. On May 10, 2013, UC filed with PERB two unfair practice charges, UPC Nos.
15 SF-CO-186-H and SF-CO-187-H, alleging in relevant part that the entire May 21 and 22, 2013
16 post-impasse strike noticed by AFSCME in the EX unit, and the entire May 21, 2013 sympathy
17 strike noticed by UPTE in the HX are unlawful because some EX and HX unit members are
18 "essential employees," whose absence from or refusal to work during the strike may pose an
19 imminent and substantial threat to the public health and safety within the meaning of *County*
20 *Sanitation, supra*, 38 Cal.3d 564. (Ross Decl., Vol. XIII, Exhs. Q, R.)

21 39. On May 16, 2013, PERB's General Counsel filed administrative complaints based
22 on UPC Nos. SF-CO-186-H and SF-CO-187-H. (Ross Decl., Vol. XVIII, Exh. CC.)

23 40. On or about May 13, 2013, UC filed with PERB two requests for injunctive relief
24 pursuant to section 3563, subd. (i), and PERB Regulation 32450 et seq., seeking to enjoin the
25 entire post-impasse strike noticed by AFSCME in the EX unit (IR Request No. 635), and the
26 entire sympathy strike noticed by UPTE in the HX (IR Request No. 636), contending in relevant
27 part that these strikes are unlawful because some EX and HX unit members may be "essential
28 employees," whose absence from or refusal to work during the strike may pose an imminent and

1 substantial threat to the health and safety of the public within the meaning of *County Sanitation*,
2 *supra*, 38 Cal.3d 564. (Ross Decl., Vol. XIII, Exh. S; Vol. XIV, Exh. T.)

3 41. The University's IR Request No. 635 regarding AFSCME specifically asked
4 PERB to seek a court order: (1) entirely enjoining AFSCME from authorizing a strike as to the
5 EX unit; (2) enjoining the members of AFSCME in those units from engaging in a strike on May
6 21 and 22, 2013; and (3) directing AFSCME to withdraw its strike notice. (Ross Decl., Vol.
7 XIII, Exh. S, p. 3.)

8 42. The University's IR Request No. 636 regarding UPTE specifically asked PERB to
9 seek a court order: (1) entirely enjoining UPTE from authorizing a sympathy strike in the HX
10 unit; (2) enjoining the members of UPTE in that unit from engaging in a strike or sympathy
11 strike on May 21, 2013; and (3) directing UPTE to withdraw any strike notice. (Ross Decl., Vol.
12 XIV, Exh. T, pp. 2-3.)

13 43. In support of IR Request Nos. 635 and 636, the University provided PERB with
14 numerous declarations supporting its request and demonstrating that the absence of allegedly
15 "essential employees" in the EX and HX units will disrupt the University's ability to provide
16 necessary medical care to numerous patients treated daily at its various medical facilities,
17 including the five UC Medical Centers. (Ross. Decl., Vol. XIII, Exh. S; Vol. XIV, Exh T; Vol.
18 XVII, Exh. W; Vol. XVII, Exh. Y.)

19 44. On or about May 16, 2013, the Board granted the University's IR Request Nos.
20 635 and 636, in part, and directed the General Counsel to initiate an appropriate Superior Court
21 action for injunctive relief, but only as to those employees in the EX and HX units that UC has
22 clearly demonstrated with competent and admissible evidence, and/or UC and the Unions have
23 stipulated, to be employees who provide "truly essential" services within the meaning of *County*
24 *Sanitation, supra*, 38 Cal.3d 564. (Ross Decl., Vol. XVIII, Exh. DD.)

25 45. Also on May 13, 2013, UC filed with PERB a third unfair practice charge, UPC
26 No. SF-CO-188-H, alleging that the May 21 and 22, 2013 sympathy strike noticed by AFSCME
27 in the SX unit, is an unlawful pre-impasse sympathy strike. (Ross Decl., ¶¶23-24.) This charge
28 did not contain any allegation that the SX unit members are "essential employees," whose

1 absence from or refusal to work during the strike may pose an imminent and substantial threat to
2 the public health and safety within the meaning of *County Sanitation, supra*, 38 Cal.3d 564.

3 46. On or about May 14, 2013, UC filed with PERB a third request for injunctive
4 relief pursuant to section 3563, subd. (i), and PERB Regulation 32450 et seq. (IR Request No.
5 637), seeking to enjoin the entire May 21 and 22, 2013 sympathy strike noticed by AFSCME in
6 the SX unit, contending in relevant part that the entire May 21, 2013 sympathy strike noticed by
7 AFSCME in the SX unit is an unlawful pre-impasse sympathy strike. (Ross Decl., ¶25.) UC did
8 not allege that any SX unit members are “essential employees,” whose absence from or refusal to
9 work during the noticed strike may pose an imminent and substantial threat to the public health
10 and safety within the meaning of *County Sanitation, supra*, 38 Cal.3d 564.

11 47. The University’s IR Request No. 637 regarding AFSCME specifically asked
12 PERB to seek a court order: (1) entirely enjoining AFSCME from encouraging a sympathy
13 strike as to the SX unit; (2) enjoining members of AFSCME in the SX unit from engaging in a
14 sympathy strike on May 21 and 22, 2013; and (3) directing AFSCME to withdraw its strike
15 notice as to the SX unit. (Ross Decl., ¶25.)

16 48. On May 14, 2013, the Board directed that IR Request No. 637, as to the sympathy
17 strike in the SX unit, be DENIED without prejudice, and the parties were promptly notified of
18 the Board’s determination. (Ross Decl., Vol. XVIII, Exh. HH.)

19 **FIRST CAUSE OF ACTION**
20 **Injunctive Relief**
21 **(Code Civ. Proc., §§ 526 & 527; Gov. Code, § 3563.1, subd. (i);**
22 **Cal. Code Regs. § 32450 et seq.)**

23 49. PERB incorporates all preceding paragraphs as though fully set forth herein.

24 50. AFSCME’s and UPTE’s conduct as described above in paragraphs 13, 21, and 22
25 constitutes a prima facie violation of section 3571.1 et seq., meaning that the post-impasse and
26 sympathy strikes noticed by the Unions in the EX and HX units to occur on May 21 and 22,
27 2013, may be unlawful, but *only to the extent* that they include employees who provide “truly
28 essential services,” and whose participation in the strikes may create an imminent and substantial
threat to the public health and safety within the meaning of *County Sanitation, supra*, 38 Cal.3d

1 564. A true and correct copy of the list of those employees who UC has clearly demonstrated
2 with competent and admissible evidence, and/or who UC and defendants AFSCME and UPTE
3 have stipulated and agreed for present purposes only, and only on a “non-precedential basis,” to
4 be “essential” within the meaning of *County Sanitation, supra*, 38 Cal.3d 564, is attached hereto
5 as Exhibit A, and incorporated herein by reference.

6 51. The University’s declarations detail substantial and irreparable injury if the
7 employees listed in Exhibit A, who have been clearly demonstrated by competent and admissible
8 evidence or by agreement of the parties to be employees who provide “truly essential services”
9 within the meaning of *County Sanitation, supra*, 38 Cal.3d 564, are not enjoined from striking.
10 (Ross Decl., Vol. XIII, Exh. S; Vol. XIV, Exh. T; Vol. XVII, Exh. W; Vol. XVII, Exh. Y.)

11 52. The instant action for injunctive relief is filed by direction of the Board. (Ross
12 Decl., Vol. XVIII, Exh. DD.)

13 53. Under the well-settled standards governing an action for injunctive relief in public
14 sector labor relations cases, *Public Employment Relations Board v. Modesto City Schools*
15 *District* (1982) 136 Cal.App.3d 881 (*Modesto*), PERB has “reasonable cause” to believe that a
16 violation of HEERA has occurred or imminently will occur because the Unions’ conduct in this
17 case—i.e., calling for, authorizing, assisting, encouraging, sanctioning, condoning, lending
18 support to, or causing any “truly essential” EX and HX bargaining-unit members to withhold
19 their services during the noticed strike in those units—amounts to an unlawful work stoppage
20 within the meaning of *County Sanitation, supra*, 38 Cal.3d 564.

21 54. Injunctive relief is also “just and proper” in the present circumstances because,
22 unless the noticed strikes are enjoined to the extent requested herein, the Board will be unable to
23 award an effective final remedy and public policy will be thwarted; the Unions’ strike will create
24 a substantial and irreparable risk of harm to the public’s health and safety; and no adequate
25 remedy at law exists because monetary damages are unavailable and insufficient to remedy any
26 such resulting harm.

27 WHEREFORE, Plaintiff prays for judgment as follows:

- 28 1. That defendants AFSCME and UPTE, their agents, employees, representatives,

1 officers, organizers, committee persons, stewards, members, and all corporations, unincorporated
2 associations, and natural persons acting in concert and participation with any of them, until a
3 hearing or trial on a preliminary injunction, be enjoined and restrained:

4 a. from calling, continuing, sanctioning, inducing, aiding, enticing,
5 encouraging, abetting, or assisting certain employees—specifically those employed in the
6 classifications and positions identified in Exhibit “A”— to engage in any strike, walkout,
7 slowdown, or work stoppage of any nature against UC during their working hours on or about
8 May 21 and 22, 2013;

9 b. from continuing in effect or refusing to rescind any strike, walkout,
10 slowdown, or work stoppage, notice, call, order, or sanction heretofore issued by defendants
11 AFSCME or UPTE to or involving those “essential employees” employed in the classifications
12 or positions identified in Exhibit “A,” with respect to the anticipated strike or work stoppage on
13 or about May 21 and 22, 2013.

14 2. That defendants AFSCME and UPTE and their agents, employees,
15 representatives, officers, organizers, committee persons, stewards, members, and all
16 corporations, unincorporated associations, and natural persons acting in concert and participation
17 with any of them, until a hearing or trial on a preliminary injunction, be enjoined and restrained
18 from doing or attempting to do, directly or indirectly, by any means, method or device
19 whatsoever, any of the acts enjoined in paragraph 1 hereof and each subdivision thereof during
20 the duration of this action.

21 3. That a Temporary Restraining Order be granted, enjoining and restraining
22 AFSCME and UPTE, their agents, employees, representatives, officers, organizers, committee
23 persons, stewards, and members, and all persons acting in concert with them or any of them,
24 until the hearing upon an Order to Show Cause, from doing or causing or permitting to be done
25 any of the acts complained of in paragraph 1 of this prayer.

26 4. That upon the hearing of said Order to Show Cause, a Preliminary Injunction be
27 granted herein restraining AFSCME and UPTE and their agents, employees, representatives,
28 officers, organizers, committee persons, stewards, and members, and all persons acting in

1 concert with them or any of them, from doing or causing or permitting to be done any of the acts
2 or things prayed in paragraph 1 of this prayer to be enjoined and restrained.

3 5. For its cost of suit herein incurred.

4 6. For such other and further relief as may be just and proper.

5 Dated: May 16, 2013

Respectfully submitted,

6 M. SUZANNE MURPHY, General Counsel
7 WENDI L. ROSS, Deputy General Counsel

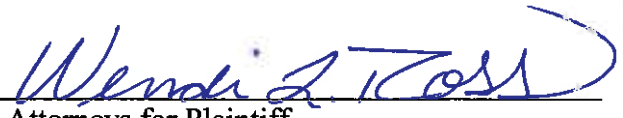
8 By 
9 Attorneys for Plaintiff
10 PUBLIC EMPLOYMENT RELATIONS BOARD

Exhibit A

Exhibit A

University of California

Essential Employee Classifications in EX & HX Units

Classification/Position	Number	Location/Duty	Replaceable	Imminent Threat
<u>Respiratory Therapists</u> (EX Unit/AFSCME)	Stipulated for NICU, PICU, and Burn Centers	Make sure patients can breathe; establish airways; manage life support systems; and are members of rapid response teams. UC IR [AFSCME] pp. 15-18. UC Decl.: Antrum, Baggett, Grimley, Robinson, Rosenthal, Schreibman; 2nd Supp. Robinson; 2nd Supp. Rosenthal.	AFSCME has agreed that Respiratory Therapists at all NICUs, PICUs and Burn Centers will agree not to strike in sufficient numbers to provide holiday/weekend staffing level. (AFSCME Strike Notice, (5/10/13.)	Needed for life support care of critical patients. Insufficient facts to establish imminent threat as to Respiratory Therapists in other units of the medical centers (i.e., adult ICU and ER). UC has not segregated staffing requirements for other departments, except UCLA. (2nd Supp. Rosenthal Decl.)
<u>Perfusionists</u> (EX Unit/AFSCME)	UCD: 2 (Robinson Decl., Supp. Robinson Decl.) UCLA: 2 (Supp. Rosenthal Decl.)	Operate bypass machines which keep patients alive during certain types of surgery; operate machinery in neonatal unit; operate ECMO machines; necessary for all open-heart and organ transplant surgeries. UC IR [AFSCME] pp. 18-19.	Not replaceable at UCSD and UCLA, due to significant training period. Not replaceable by other existing staff.	Needed for life support care and for transplant and open- heart surgeries.

Classification/Position	Number	Location/Duty	Replaceable	Imminent Threat
<u>Imaging Techs</u> (EX Unit/AFSCME)	UCD: 8 (MRI) 2 (CT) (Supp. Shrewsbury Decl., Ex. A.) UCI: 2 (CT) (Kronheim Decl.) UCSD: 3 (CT) (Baggett Decl.)	Provide immediate CT and MRI diagnostics to ensure that emergency room patients are diagnosed quickly and accurately. UC IR [AFSCME], pp. 33-35.	UCD, UCI, and UCSD are unable to find replacements for CT techs. UCD unable to find replacements for MRI techs. Physicians and nurses are unable to perform these duties. (2nd Supp. Baggett Decl.)	Likely imminent threat established. Immediate scans are needed for head trauma and stroke patients. (2nd Supp. Robinson Decl.)
<u>Cardiovascular Techs</u> (EX Unit/AFSCME)	UCD: 1 (Supp. Robinson Decl.; Supp. Shrewsbury Decl.) UCLA: 2 (Supp. Rosenthal Decl.)	Run the cardiac catheterization labs; perform lifesaving procedures; assist physicians in diagnosing cardiac and vascular ailments; are needed to keep the labs open. UC IR [AFSCME] pp. 36.	UCD and UCLA were unable to obtain sufficient replacements to provide weekend/holiday staffing levels for Cardiovascular Techs.	Likely imminent threat established to performance of lifesaving procedures. (Supp. Robinson Decl.)

Classification/Position	Number	Location/Duty	Replaceable	Imminent Threat
Pharmacists (HX Unit/UPTE)	Minimal number of Pharmacists needed to provide weekend staffing level, accounting for replacements and coverage by supervisors. UCD: 10 (Grubbs Decl.) UCI: 12 (Zeitany Decl.) UCLA: 44 (Zalba Decl.) UCSD: 18 (Daniels Decl.) UCSF: 39 (Wandres Decl.; Supp. Wandres Decl.) Stipulated for Poison Control Pharmacists	Check and dispense medications and IV solutions; includes STAT orders which must be filled within 15-60 minutes; staff Poison Control Center at UCSF; without pharmacists, pharmacies would have to be closed by law; absence would "pose significant safety risks." UC IR [UPTE] pp. 30-37 UC Decs: Daniels, Grubbs, Wandres, Zalba, Zeitany UPTE Decs: Felson (#8), Supp. Felson, (#6)	UPTE has agreed to provide Pharmacists at the Poison Control service centralized at UCSF, sufficient to achieve a combined staffing level equal to that found on a typical Sunday or holiday UPTE Strike Notice (5/10/13) (Stipulation) Doctors and nurses cannot replace work of Pharmacists. (2nd Supp. Rosenthal Decl.) No registry/replacement company workers available. (Ludewig [UCLA]; UC IR [UPTE], Exs. 26-31.)	Inpatient pharmacies would need to be closed; insufficient replacement workers are available to provide minimum weekend staffing; Pharmacy Techs in the AFSCME EX Unit will also be striking.

Classification/Position	Number	Location/Duty	Replaceable	Imminent Threat
<u>Clinical Lab Scientists (CLS)</u> (HX Unit/UPTE)	Stipulated	Needed for timely testing of blood, bodily fluids, and tissue samples; laboratories are staffed 24/7; needed for trauma care; needed for quick diagnosis. UC IR [UPTE] pp 23-27 UC Decs: Becker, Elgarico, Yalich, Clancy, Binder, Tamashiro	UPTE has agreed to provide CLSs sufficient to achieve a combined staffing level equal to that found on a typical Sunday or holiday. UPTE Strike Notice (5/10/13) (Stipulation)	Need for trauma care and immediate diagnostics for emergent/critical patients.
<u>Hospital Radiation Physicists</u> (HX Unit/UPTE)	Stipulated	Provide treatment for cancer outpatients; delay in treatment will harm patient. UC IR [UPTE] pp.38-39. UC Dec. Fogh	UPTE has agreed to provide Physicists sufficient to achieve a combined staffing level equal to that found on a typical Sunday or holiday UPTE Strike Notice (5/10/13) (Stipulation)	Cancer patients cannot receive scheduled treatments.
<u>Classifications at San Francisco General Hospital (SFGH)</u>	Stipulated	Multiple duties at SFGH; UCSF supplies respiratory therapists, anesthesia technicians, and CLSs to perform work at SFGH. UC IR [AFSCME] p. 14. UC IR [UPTE] p. 14. UC Dec. Schreibman	UPTE and AFSCME have agreed to provide staffing in all classifications at SFGH sufficient to achieve a combined staffing level equal to that found on a typical Sunday or Holiday AFSCME Strike Notice (5/10/13) UPTE Strike Notice (5/10/13) (Stipulation)	No specific imminent threat for SFGH established, except to extent classifications overlap with classifications listed above. However, the parties will stipulate to these employees.