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14 ATTORNEYS FOR PLAINTIFFS AND
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18 UNITED STATES DISTRICT COURT
19 FOR THE EASTERN DISTRICT OF CALIFORNIA

20 DIANNE KNOX; WILLIAM L. BLAYLOCK; ROBERT
21 A. CONOVER; EDWARD L. DOBROWOLSKI, JR.;
22 KARYN GIL; THOMAS JACOB HASS; PATRICK
23 JOHNSON; JON JUMPER; AND R. PAUL RICKER,
24 ON BEHALF OF THEMSELVES AND THE CLASS
25 THEY SEEK TO REPRESENT,

26 Plaintiffs,

27 v.

28 STEVE WESTLY, Controller, State of California;
AND CALIFORNIA STATE EMPLOYEES
ASSOCIATION, LOCAL 1000, SERVICE
EMPLOYEES INTERNATIONAL UNION, AFL-CIO-
CLC,

Defendants.

CASE No.

CLASS ACTION

**PLAINTIFFS' VERIFIED CLASS
ACTION COMPLAINT**

COMPLAINT

1. This is a civil rights, class action seeking immediate injunctive and declaratory relief, and nominal and compensatory damages and/or restitution, to redress and prevent the deprivation, through action by Defendants acting under color of state law, of Plaintiff public employees' rights,

1 privileges and immunities under the First and Fourteenth Amendments to the United States
2 Constitution.

3 2. Specifically, this civil rights action seeks to prevent CSEA from increasing the
4 amount of money taken from the wages of public employees as dues or compulsory fees and
5 using the temporary assessment as an involuntary loan to defeat various California political
6 propositions on the **8 November 2005** ballot, and to take other political or ideological actions
7 which are contrary to the beliefs and positions of the public employees. These deductions
8 have been and will continue to be conducted in a manner which violates Plaintiffs' First and
9 Fourteenth Amendment rights as set forth in the United States Supreme Court's decisions
10 establishing the procedures and safeguards, and limiting the circumstances, under which the
11 temporary assessment in dues and fees may constitutionally be collected from public
12 employees. These safeguards include notice to all potential objectors of the purpose(s) for
13 which the temporary assessment is to be used and spent, and an appropriately justified
14 advance reduction or advance rebate in the amount of the temporary assessment used
15 wholly for ballot propositions, political activities and other nonbargaining activities.

16 3. Once the employees' money is spent contrary to their wishes to affect: (1) the
17 outcome of the ballot propositions; (2) the Governor's programs; and (3) political or ideological
18 matters, and for other nonbargaining activities, the employees' First Amendment rights are
19 irretrievably lost. Accordingly, immediate injunctive relief is necessary to maintain the *status quo* and
20 prevent the irreparable injury and loss of the First Amendment rights of the employees and the class or
21 classes they seek to represent.

22 JURISDICTION AND VENUE

23 4. This action arises under the Constitution and laws of the United States,
24 particularly the First, Fifth, and Fourteenth Amendments to the United States Constitution.
25 The jurisdiction of this Court, therefore, is invoked under 28 U.S.C. § 1331.

26 5. This is also an action under the Federal Civil Rights Act of 1871, 42 U.S.C.
27 § 1983, to redress the deprivation, under color of state law, of rights, privileges and
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1 immunities secured to Plaintiffs and class members by the Constitution of the United States,
2 particularly the First, Fifth, and Fourteenth Amendments thereto. The jurisdiction of this
3 Court, therefore, is invoked under 28 U.S.C. § 1343(a)(3) & (4), pursuant to which this Court
4 may grant: a) damages or restitution for the violation of Plaintiffs' First and Fourteenth Amendment
5 rights in the amount of the temporary assessment unconstitutionally collected and used, plus interest;
6 b) injunctive relief against the future collection or spending of the temporary assessment; c) nominal
7 damages for the violation of Plaintiffs' federally protected rights; and d) reasonable attorneys' fees,
8 pursuant to 42 U.S.C. § 1988.

9 6. This is also a case of actual controversy where Plaintiffs are seeking a
10 declaration of their rights under the Constitution of the United States. Under 28 U.S.C.
11 §§ 2201 and 2202, this Court may declare the rights of Plaintiffs and grant further necessary
12 and proper relief based thereon, including preliminary and permanent injunctive relief,
13 pursuant to Rule 65, FED.R.CIV.P.

14 7. **Venue:** Pursuant to 28 U.S.C. § 1391(b) and § 1392, venue is proper in this
15 Court because Defendants either reside and/or have offices and conduct their business in
16 the judicial district of the United States District Court for the Eastern District of California.

17 PARTIES

18 8. Plaintiffs Dianne Knox, William L. Blaylock, Robert A. Conover, Edward L.
19 Dobrowolski, Jr., Karyn Gil, Thomas Jacob Hass, Patrick Johnson, Jon Jumper, and R. Paul
20 Ricker are, and were at all times mentioned herein, individuals employed by various
21 instrumentalities of the State of California. As such, they are "state employees" within the
22 meaning of the Ralph C. Dills Act, CAL. GOVT. CODE, § 3513(c). Plaintiffs are employed in a
23 bargaining unit designated as "Bargaining Unit 1," which is one bargaining unit of State
24 employees among several represented, exclusively for purposes of collective bargaining with
25 their employer, by Defendant California State Employees Association, Local 1000, Service
26 Employees International Union, AFL-CIO, CLC (hereinafter "CSEA" or "the union").

27 a. Plaintiffs Knox, Blaylock, Dobrowolski, Gil, Hass, Johnson, and Jumper,
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1 are not members of CSEA and have not, at any time material hereto, been members
2 of CSEA and/or its affiliates, and nevertheless have been and are subject to the
3 automatic seizure of agency fees, including the temporary assessment;

4 b. Until on or after 1 October 2005, Plaintiff Conover was a member of
5 CSEA and/or its affiliates, and full union dues were deducted monthly from his wages;
6 and

7 c. Plaintiff Ricker is, and has been at all times material hereto, a member of
8 CSEA and/or its affiliates, and full union dues have been and continue to be deducted
9 monthly from his wages.

10 9. Defendant Steven Westly (hereinafter "Westly") is the Controller of the State of
11 California. As such, he is charged with the responsibility of issuing wages to employees of
12 the State and/or its Departments, including Plaintiffs, and processing all deductions therefore,
13 including for union dues and so-called "fair share" fees pursuant to "agency shop"
14 agreements. He is sued in his official capacity.

15 10. Defendant California State Employees Association, Local 1000, Service
16 Employees International Union, AFL-CIO, CLC ("CSEA" or "the union") is an "employee
17 organization" as defined in the Ralph C. Dills Act, CAL. GOVT. CODE, § 3513(a), and has been
18 recognized as the exclusive representative under said law for collective bargaining purposes
19 of all State employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. On information
20 and belief, Defendant CSEA is a nonprofit corporation formed and existing under the laws of the
21 State of California. CSEA is headquartered in the Eastern District of California, and conducts
22 its business and operations throughout the State of California, and also within the Eastern
23 District of California.

24 **CLASS ACTION ALLEGATIONS**

25 11. Plaintiffs' action is a class action brought by Plaintiffs on their own behalf and
26 on behalf of others similarly situated, pursuant to Rule 23(b)(1)(A) and (b)(2) and,
27 alternatively, Rule 23(b)(3), FED.R.CIV.P. The class that Plaintiffs seek to represent consists
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1 of all former, current, and future State of California employees employed in Bargaining Units
2 1, 3, 4, 11, 14, 15, 17, 20, and 21 who are, have been, or will be represented exclusively for
3 purposes of collective bargaining by CSEA, in three subclasses:

4 a. All individuals who pay compulsory fees to CSEA who are not members and
5 who have, at one time or another, specifically objected to the use of their union fees for politics
6 or other nonbargaining activities;

7 b. All individuals who pay compulsory fees to CSEA who are not members and
8 who have never specifically objected to the use of their union fees for politics or other
9 nonbargaining activities; and

10 c. All individuals who pay dues to CSEA as members.

11 12. The number of persons in this class exceeds one hundred thousand. Upon
12 information and belief, the number of persons in each subclass is believed to number in the
13 thousands, and may be in the tens of thousands. These persons are therefore so numerous
14 that joinder of all members of the class and each subclass obviously is impractical.

15 13. There are questions of law and fact common to all members of the class, to-
16 wit, whether Defendants may constitutionally and lawfully seize the temporary assessment from the
17 wages of the state employees which are to be used wholly for ballot propositions, political activities
18 and other nonbargaining activities without providing all of the procedural safeguards required by the
19 First and Fourteenth Amendments to the United States Constitution to be given all potential objectors.

20 14. Plaintiffs' claims are typical of other members of the class and each subclass, who
21 are subject to the same deprivations of their rights by CSEA's collection and spending of the
22 temporary assessment, without providing the necessary constitutional safeguards and rights, as
23 hereinafter alleged.

24 15. Plaintiffs can adequately represent the interests of other members of the class
25 and each subclass. Plaintiffs have no interests antagonistic to other members of the class
26 and subclasses related to the subject matter of this lawsuit, since all members of the class
27 and each subclass are "potential objectors" as that term was used by the United States
28 Supreme Court in *Hudson*, 475 U.S. at 306, and are entitled to notice and the procedures and

1 21. Acting in concert under color of state law — to-wit, the Ralph C. Dills Act, CAL.
2 GOVT. CODE § 3512, *et seq.* — the State of California has recognized Defendant CSEA as the
3 exclusive bargaining agent for the Plaintiffs and other State employees in bargaining units designated
4 as Bargaining Units 1 (Professional, Administrative, Financial, and Staff Services bargaining unit), 3
5 (Education and Library bargaining unit), 4 (Office and Allied workers bargaining unit), 11
6 (Engineering and Scientific Technician bargaining unit), 14 (Printing Trades bargaining unit), 15
7 (Allied Services bargaining unit), 17 (Registered Nurses bargaining unit), 20 (Medical and Social
8 Services Specialists bargaining unit), and 21 (Education, Library, and Maritime bargaining unit).
9 CSEA and the State of California have entered into a series of Memoranda of Understanding
10 (“MOUs”) controlling the terms and conditions of employment for Plaintiffs and the class and
11 subclasses of State employees Plaintiffs seek to represent.

12 22. Pursuant to the Ralph C. Dills Act, CAL. GOVT. CODE § 3512, the State and CSEA have
13 entered into MOUs governing these bargaining units, including a provision requiring that all State
14 employees in Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21 join CSEA as formal union members,
15 or have deducted from their wages agency fees, as a condition of continued public employment.

16 23. On or about 30 July 2005, the Local 1000 (CSEA) Council proposed an “Emergency
17 Temporary Assessment to Build a Political Fight-Back Fund” for “use[]d for a broad range of political
18 expenses, including television and radio advertising, direct mail, voter registration, voter education,
19 and get out the vote activities in our work sites and in our communities across California,” specifically
20 stating that “The Fund will not be used for regular costs of the union -- such as office rent, staff
21 salaries or routine equipment replacement, etc.” A true and correct copy of the motion to pass this
22 temporary assessment, taken from CSEA’s website
23 (http://www.seiu1000.org/august_fight_back_fund.cfm) is attached hereto and incorporated herein as
24 Exhibit A.

25 24. On or about 27 August 2005, CSEA General Council delegates voted to impose a
26 “temporary dues increase (1/4th of 1 percent of salary)” or assessment, effective 1 September 2005, to
27 create what CSEA characterizes as “a Political Fight Back Fund to be used for advertising, mail, voter
28 registration and education, and get-out-the-vote activities....” *CSEA Unity*, September 2005, page 1 (a

true and correct copy of said letter is attached hereto and incorporated herein as Exhibit B).

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2 25. CSEA’s temporary assessment, which actually ranges from 25% to 36% depending on
3 the job classification and monthly salary, began with the 30 September 2005, paycheck issued to State
4 employees, and is targeted primarily, if not wholly, at the defeat of certain ballot propositions in a
5 special election to be held on 8 November 2005, fighting, *inter alia*, the Governor’s electoral and
6 political financing policies, and to support other political and nonbargaining actions. Specifically, the
7 temporary assessment will “be used specifically in the political arenas of California to defend and
8 advance the interests of members of Local 1000 and the important public services they provide,” and
9 will be “used for a broad range of political expenses, including television and radio advertising, direct
10 mail, voter registration, voter education, and get out the vote activities in ... work sites and in ...
11 communities across California.” CSEA has represented specifically that “The Fund will not be used
12 for regular costs of the union — such as office rent, staff salaries or routine equipment replacement,
13 etc.,” and that this temporary assessment will generate approximately \$12 million for CSEA’s political
14 activities. Exhibit A.

15 26. CSEA’s temporary assessment began with the 30 September 2005 paychecks issued to
16 State employees. The normal \$45.00 per month dues cap does not apply to this temporary assessment,
17 and monthly dues now range from \$29.78 for a janitor to \$61.25 for an education consultant. Union
18 dues in the amount of \$66.77 was deducted from Plaintiff Conover’s September paycheck.

19 27. CSEA opposes Propositions 75 & 76. The Alliance for a Better California, a coalition
20 of the State’s public employee labor unions, of which CSEA is a member which it actively supports,
21 also opposes Propositions 74, 77, & 78, and supports Propositions 79 & 80. CSEA has contributed to
22 the Alliance and other political committees opposing Propositions 75 & 76.

23 28. Plaintiffs support some or all of the propositions CSEA opposes, oppose some or all of
24 the propositions CSEA supports, and/or do not believe that their dues or forced fees should be used on
25 any ballot proposition and other political and nonbargaining activities.

26 29. Plaintiffs have a First Amendment right to prevent the temporary assessment from
27 being used for or against ballot propositions and other political and nonbargaining activities which
28 conflict with their own personal preferences.

1 30. Plaintiffs also have a First Amendment right to adequate procedures which will, *inter*
2 *alia*, give the employees adequate advance notice of the political and other nonbargaining uses to
3 which the temporary assessment is targeted. Such notice would allow them to make an informed
4 decision on whether their union dues and/or agency fees are (or will be) used for political and other
5 nonbargaining activities which conflict with their own personal preferences so that they can prevent
6 the use of their moneys for ballot propositions and other political and nonbargaining activities that
7 they oppose. **See** *Teachers Local No. 1 v. Hudson*, 475 U.S. 292, 306-10 (1986).

8 31. During the month of June 2005, CSEA sent a notice (“CSEA’s 2005 Notice”) to most
9 or all of its nonmember employees. CSEA did not send any such notice to its members. This notice
10 preceded the vote for a temporary assessment by approximately two-to-three months, contained no
11 notice that a political dues and fees increase would be included in the 2005-06 dues and fees, and
12 stated that “Dues are subject to change without further notice to fee payers.” A true and correct copy
13 of said notice is attached hereto and incorporated herein as Exhibit C.

14 32. CSEA’s 2005 Notice set the agency fee to be seized from 1 July 2005, through 30 June
15 2006 (“2005-06 fiscal year”), at 99.1% of dues. CSEA’s 2005 Notice also informed nonmembers that
16 a reduced agency fee of 56.35% of CSEA’s annual dues, or 0.5635% of pay, would be charged to
17 nonmembers who objected to paying the full agency fee and requested a rebate pursuant to the
18 procedures and deadlines outlined in CSEA’s 2005 Notice. The 56.35% is based on CSEA’s actual
19 expenditures for the year ending 31 December 2004, in which CSEA calculated chargeable
20 expenditures to be 56.35% of its total expenditures.

21 33. On or about 31 August 2005, CSEA sent another letter, addressed to “Local 1000
22 Members and Fair Share Fee Payers.” As it affected union members, *inter alia*, said letter announced
23 the dues increase, and stated that “The \$45 per month cap on our regular dues of 1% of gross pay will
24 continue in effect, but will not apply to this additional .0025 temporary increase.” As it affected
25 nonmember objectors, *inter alia*, said letter announced that “Fair Share fees will rise by .002478 of
26 gross monthly salary.” A true and correct copy of said letter is attached hereto and incorporated
27 herein as Exhibit D.

28 34. Since 1 September 2005, the agency fee deducted from the wages of all nonmember

1 objectors by Westly and transmitted to CSEA for its spending has been increased by 0.2478% of
2 salary, a 24.78% - 35.75% or more increase of monthly fees paid. Thus, the actual reduced agency fee
3 charged objecting nonmembers in 2005-06 includes 99.12% of the 25% temporary assessment, which
4 increase has been imposed solely for nonchargeable political and ideological purposes, resulting in a
5 forced loan from them that will be spent on the ballot propositions and other political and
6 nonbargaining activities to which they object.

7 35. Since 1 September 2005, the agency fee deducted from the wages of nonmembers
8 failing to object by Westly and transmitted to CSEA for its spending has been increased by 0.2478%
9 of salary, a 24.78% - 35.78% increase of monthly fees paid.

10 36. Since 1 September 2005, the dues paid by union members and collected by CSEA for
11 its spending has been increased by 0.25% of salary, a 25%-36.10% or more increase of monthly dues
12 paid.

13 37. Moreover, CSEA's pre-1 September 2005, spending on the ballot propositions and
14 other political and nonbargaining activities facilitated by the temporary assessment will not be
15 included in setting the new reduced agency fee percentage until 2006, more than six months after the
16 initial seizures; and the 1 September through 8 November 2005, spending on the ballot propositions
17 and other political and nonbargaining activities facilitated by the fee increase will not be included in
18 setting the new reduced agency fee percentage until 2007, eighteen months later.

19 38. CSEA's usual agency fee procedure allows CSEA to force nonmembers to loan it the
20 increased fee amount to spend and use on the ballot propositions and other political and nonbargaining
21 activities, which CSEA will not begin to "repay" for six months and not fully "repay" until eighteen
22 months after the first seizures. In addition, CSEA's repayment of the forced loan is contingent upon
23 the nonmember remaining employed by the State in a bargaining unit represented by CSEA, and
24 objection in both of the subsequent years.

25 39. In early September 2005, after receiving Exhibit D hereto, Plaintiff Dobrowolski called
26 CSEA's Sacramento office, and was told to call its Riverside office. He did so, and left a message for
27 Jodi Smith, area manager, asking that she call him back. Smith returned his call and stated that, even
28 if Dobrowolski objected to the payment of the full agency fees, *via* a letter in June, there was nothing

1 he could do about the September increase for the temporary assessment. She also stated that “we are
2 in the fight of our lives,” and that the temporary assessment was needed, and that there was nothing
3 that could be done to stop CSEA’s expenditure of the temporary assessment for political purposes.

4 40. As a result of the timing of CSEA’s increase in their dues and fees, the minimum
5 procedures required by the First and Fourteenth Amendments to the United States Constitution, as
6 explained in *Hudson*, have not been provided to the employees and the class they seek to represent, all
7 of whom are potential objectors to CSEA’s use of the increase in the dues and fees primarily, if not
8 wholly, for ballot propositions, political and other nonbargaining purposes.

9 41. Specifically, CSEA has not provided Plaintiffs Knox, Blaylock, Dobrowolski, Gil,
10 Hass, Johnson, Jumper, and other nonmember State employees with an opportunity to object to the
11 use of the fee increase on the ballot propositions, politics and other nonbargaining activities; and an
12 immediate refund or reduction of the increased fee amount. Absent such immediate procedural
13 protections, the nonmember State employees are forced to loan the increase in their fees to CSEA for
14 its use and spending on the ballot propositions, politics and other nonbargaining activities which they
15 oppose and which they cannot constitutionally be required to subsidize.

16 42. CSEA has not provided Plaintiffs Conover and Ricker and the other member State
17 employees, who are potential objectors, with: (1) an opportunity to resign and, as nonmembers, raise
18 an objection to the use of the dues/fee increase on the ballot propositions, politics and other
19 nonbargaining activities; and (2) an immediate refund or reduction of the increased dues/fee amount.
20 Without such immediate procedural protections, the member State employees are forced to loan the
21 increase in their dues to the CSEA for its use and spending on the ballot propositions, politics and
22 other nonbargaining activities which the members oppose and which they cannot constitutionally be
23 required to subsidize.

24 **FIRST CLAIM FOR RELIEF: CONSTITUTIONALLY ADEQUATE PROCEDURES**

25 43. The forgoing paragraphs are re-alleged.

26 44. The First and Fourteenth Amendments to the United States Constitution require that
27 the procedures for the collection of compulsory union dues and fees be carefully tailored to limit the
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1 infringement on the public employees' fundamental First Amendment rights to freedom of speech,
2 association, petition, belief and thought by facilitating the public employees' ability, as potential
3 objectors, to protect those rights, including the right not to have their moneys used and spent on ballot
4 propositions, political and other nonbargaining activities to which they object and the right not to have
5 their objection met by a forced loan, followed by a rebate months, if not years, later.

6 45. Under color of state law, Defendants have collected and continue to collect an increase
7 in compulsory dues and fees which CSEA has targeted, and will use and spend primarily on the
8 upcoming ballot propositions election and for politics and other nonbargaining activities without first
9 providing the carefully tailored procedures required by the First and Fourteenth Amendments to the
10 United States Constitution. This deprives the public employees of their constitutional right to due
11 process and proper procedures.

12 **SECOND CLAIM FOR RELIEF: FREE SPEECH**

13 46. Paragraphs 1 through 42 are realleged.

14 47. Under color of state law, Defendants collect and continue to collect an increase in
15 compulsory dues and fees from the public employees which CSEA has targeted, and will use and
16 spend primarily on the upcoming ballot propositions election and for other political and nonbargaining
17 activities contrary to the public employees' political preferences.

18 48. Without being provided with an immediate rebate of or reduction in the increase in
19 dues and fees being used and spent on ballot propositions and other political and nonbargaining
20 activities, the objecting public employees are being forced to loan the unions their money and are
21 otherwise deprived of their right to free speech, free association and political autonomy under the First
22 Amendment to the United States Constitution.

23 **PRAYER FOR RELIEF**

24 49. Unless immediately restrained by this Court, Defendants' seizure of the increase in
25 dues and fees from the named Plaintiffs' and class members' wages has directly caused, and will
26 continue to cause, Plaintiffs and the class members they seek to represent to suffer the irreparable
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1 injury that is inherent in the violation of First Amendment rights and for which there is no adequate
2 remedy at law and has deprived and will continue to deprive them of portions of their wages without
3 due process of law.

4 WHEREFORE, the Plaintiffs request the following relief from this Court:

5 **A. Temporary Restraining Order and/or Preliminary Injunction:** Immediately issue,
6 pending a hearing on Plaintiffs' prayer for permanent relief, a temporary restraining order and/or a
7 preliminary injunction restraining Defendant CSEA, its officers, agents, assistants, successors,
8 employees, attorneys, and all persons acting in concert or cooperating with it or at its direction or
9 under its control, from accepting any payroll deductions or direct payment of the increase in union
10 dues and fees from the wages of any named Plaintiff and any of the class members they represent,
11 from disbursing any of the increase in union dues and fees still in its possession and/or control, and
12 requiring said Defendant to restore the *status quo* by placing any increase in dues and fees it has
13 received or will receive into the registry of the Court or a Court-supervised escrow account, until
14 further order of the Court.

15 **B. Class Certification:** Enter an order, as soon as practical, certifying this case as a class
16 action consisting of the class of all individuals who pay compulsory dues or fees to Defendant CSEA,
17 as outlined in the three subclasses identified in ¶ 13, *supra*; and appointing Plaintiffs' counsel as class
18 counsel.

19 **C. Declaratory Judgment:** Enter a declaratory judgment, pursuant to 28 U.S.C. § 2201,
20 declaring:

21 1) that the named Plaintiffs and class members have a constitutional right to an
22 advance "*Hudson*" notice of the temporary assessment and increase in the dues and fees to be
23 used in the upcoming ballot proposition special election and for other politics;

24 2) that the named Plaintiffs and class members have a constitutional right to
25 receive advance notice of how they can object to their temporary assessment being used in the
26 upcoming ballot proposition special election and for other politics; and

27 3) that the objectors have a constitutional right to prevent the unions from using
28 and spending the temporary assessment in the upcoming ballot proposition election and for

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ATTORNEYS FOR PLAINTIFFS AND
THE CLASS THEY SEEK TO REPRESENT

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