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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Jose Division

15 JUDITH LIEGMANN, COLLEEN HOOVER,
CAROLINE WORTHINGTON, GWYNNETH
16 MORIN, ANTHONY LIMA, FRANKLIN
LOWENTHAL, and all others similarly situated,

17 *Plaintiffs,*

18 v.

19 CALIFORNIA TEACHERS ASSOCIATION,
20 CALIFORNIA FACULTY ASSOCIATION,

21 *Defendants.*

Civil Action No:

**CIVIL RIGHTS (42 U.S.C. § 1983)
VERIFIED COMPLAINT FOR
DECLARATORY, MONETARY AND
INJUNCTIVE RELIEF**

CLASS ACTION

22
23 Judith Liegmann, Colleen Hoover, Caroline Worthington, Gwynneth Morin, Anthony
24 Lima, and Franklin Lowenthal, through counsel, file their class action complaint against the
25 above-named Defendants and allege:

26 **I. *Nature of the Case.***

27 1. This is a civil rights, class action seeking immediate injunctive and declaratory
28 relief, and nominal and compensatory damages and/or restitution, to redress and prevent the

1 deprivation, through action by Defendant labor organizations acting under color of state law, of
2 Plaintiff public educators' rights, privileges and immunities under the First and Fourteenth
3 Amendments to the United States Constitution.

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

17 3. Once the educators' moneys are spent, contrary to their wishes, to affect the
18 outcome of the ballot propositions, the Governor's education programs and political or
19 ideological matters, and for other nonbargaining activities, the educators' First Amendment
20 rights are irretrievably lost. Accordingly, immediate injunctive relief is necessary to maintain
21 the status quo and prevent the irreparable injury and loss of the First Amendment rights of the
22 educators and the class they seek to represent.

23 **II. Jurisdiction.**

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

27 5. This is an action under the Federal Civil Rights Act of 1871, 42 U.S.C. § 1983, to
28 redress the deprivation, under color of state law, of rights, privileges and immunities secured by

1 the Constitution of the United States, particularly the First and Fourteenth Amendments thereto.
2 Jurisdiction, therefore, is invoked under 28 U.S.C. § 1343(a)(3) and (4), pursuant to which the
3 Court may grant: a) damages or restitution for the violation of Plaintiffs' First and Fourteenth
4 Amendment rights in the amount of the increase in dues or fees unconstitutionally collected and
5 used, plus interest; b) injunctive relief against the future collection or spending of the increase in
6 dues or fees; c) nominal damages for the violation of Plaintiffs' federally protected rights; and
7 d) reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988.

8 6. This is a case of actual controversy in which Plaintiffs seek a declaration of their
9 rights under the Constitution of the United States. Under 28 U.S.C. §§ 2201 and 2202, this Court
10 may declare the rights of Plaintiffs and grant further necessary or proper relief. Under Federal
11 Rule of Civil Procedure 65, the Court may issue a temporary restraining order and preliminary
12 injunction.

13 **III. *Intradistrict Assignment.***

14 6a. Pursuant to Civil L.R. 3-2(c), this case should be assigned to the San Jose division
15 of the Court because the lead Plaintiff resides and works within the San Jose division and her
16 moneys are being seized there. Thus, a substantial part of the events or omissions which give
17 rise to the claim occurred in the San Jose division.

18 **IV. *Venue.***

19 7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) and (c), because the
20 Defendants either reside and/or have offices and/or conduct their business in this judicial district,
21 and because a substantial part of the events giving rise to the claim occurred in this judicial
22 district.

23 **V. *Parties.***

24 8. Plaintiff Judith Liegmann is a fifth grade bilingual teacher employed by the
25 Sunnyvale School District, who is required, as a condition of employment and by the California
26 Educational Employment Relations Act ("EERA"), Cal. Gov. Code § 3546(a), to pay dues or
27 fees to Defendant California Teachers Association ("CTA").

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1 9. Ms. Liegmann is not a member of the CTA and its affiliates, including the
2 Sunnyvale Education Association, which, pursuant to state law, represents her exclusively for
3 purposes of collective bargaining with her employer.

4 10. Plaintiff Colleen Hoover is a second grade teacher employed by the Hesperia
5 Unified School District, who is required, as a condition of employment and by the EERA, Cal.
6 Gov. Code § 3546(a), to pay dues or fees to Defendant CTA.

7 11. Ms. Hoover is not a member of the CTA and its affiliates, including the Hesperia
8 Teachers' Association/CTA/NEA, which, pursuant to state law, represents her exclusively for
9 purposes of collective bargaining with her employer.

10 11a. Plaintiff Caroline Worthington is an elementary school literacy coach employed
11 by the San Jacinto Unified School District, who is required, as a condition of employment and by
12 the EERA, Cal. Gov. Code § 3546(a), to pay dues or fees to Defendant CTA.

13 11b. Ms. Worthington is not a member of the CTA and its affiliates, including the San
14 Jacinto Teachers Association/CTA/NEA, which, pursuant to state law, represents her exclusively
15 for purposes of collective bargaining with her employer.

16 12. Plaintiff Gwynneth Morin is a first grade teacher employed by the Hesperia
17 Unified School District, who is required, as a condition of employment and by the EERA, Cal.
18 Gov. Code § 3540.16(I) and 3543(a), to pay dues or fees to Defendant CTA.

19 13. Ms. Morin is a member of the CTA and its affiliates, including the Hesperia
20 Teachers' Association/CTA/NEA, which, pursuant to state law, represents her exclusively for
21 purposes of collective bargaining with her employer.

22 14. Plaintiff Anthony Lima is a university professor in the Economics department of
23 the California State University, East Bay, who is required, as a condition of employment and by
24 the California Higher Education Employer-Employee Relations Act ("HEERA"), Cal. Gov.
25 Code § 3583.5(a)(1), to pay dues or fees to Defendants California Faculty Association ("CFA")
26 and CTA.

27 15. Professor Lima is not a member of the CTA or the CFA, which, pursuant to state
28 law, represents him exclusively for purposes of collective bargaining with his employer.

1 16. Plaintiff Franklin Lowenthal is a university professor in the Accounting &
2 Computer Information Services Department of the California State University, East Bay, who is
3 required, as a condition of employment and by the HEERA, Cal. Gov. Code § 3583.5(a)(1), to
4 pay dues or fees to Defendants CFA and CTA.

5 17. Professor Lowenthal is not a member of the CTA or the CFA, which, pursuant to
6 state law, represents him exclusively for purposes of collective bargaining with his employer.

7 18. Defendant California Teachers Association is a corporation, formed and existing
8 under the laws of the State of California, with headquarters in Burlingame, California.

9 19. CTA is the state affiliate of local unions throughout California that have been
10 granted the special privilege, pursuant to the EERA, Cal. Gov. Code § 3546, to impose
11 compulsory union dues and fees upon California public school teachers. These compulsory dues
12 and fees include the dues and fees charged by Defendant CTA.

13 20. CTA is also an “employee organization,” as defined in the EERA.

14 21. Defendant California Faculty Association is a corporation, formed and existing
15 under the laws of the State of California, doing business throughout the State of California,
16 including in this judicial district.

17 22. CFA has been granted the special privilege, pursuant to the HEERA, Cal. Gov.
18 Code § 3583, to impose compulsory union dues and fees on faculty in the California system of
19 higher education. These compulsory dues and fees also include dues and fees charged by its
20 affiliate, the CTA.

21 23. CFA is also an “employee organization” and “exclusive representative” as
22 defined in the HEERA.

23 24. The public employers of Plaintiffs and the class they seek to represent, pursuant
24 to the EERA, the HEERA or collective bargaining agreements between those employers and the
25 CTA, local affiliates of the CTA, or the CFA, deduct compulsory union dues and fees from the
26 educators and transfer the respective dues and fees, directly or indirectly, to either the CTA or
27 the CFA.

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1 25. In demanding that the public employers collect and transfer the compulsory dues
2 and fees pursuant to the EERA, HEERA and/or collective bargaining agreements with the public
3 employers, Defendants CTA and CFA, acting in concert with the public employers, are state
4 actors for purposes of 42 U.S.C. § 1983.

5 **VI. Class Action Allegations.**

6 26. This is a class action brought by the named Plaintiffs (collectively “educators”)
7 for themselves and all other similarly situated educators, pursuant to Federal Rule of Civil
8 Procedure 23(b)(1)(A) and (b)(2), and, alternatively, 23(b)(3). The class consists of all
9 individuals who pay compulsory dues or fees to Defendant CTA or compulsory fees to
10 Defendant CFA (hereafter collectively “unions”). There are four sub-classes which consist of:

- 11 I. All individuals who pay compulsory fees to the CTA who are not
12 members and who have, at one time or another, specifically objected to
13 the use of their union fees for politics or other nonbargaining activities;
14 II. All individuals who pay compulsory fees to the CTA who are not
15 members and who have never specifically objected to the use of their
16 union fees for politics or other nonbargaining activities;
17 III. All individuals who pay dues to the CTA as members; and
18 IV. All individuals who pay compulsory fees to the CFA who are not
19 members.

20 27. The number of educators in the class exceeds three hundred thousand. Each sub-
21 class exceeds one thousand members. The number of educators in the class and each subclass is
22 therefore so numerous that joinder of the entire class or any entire subclass is impractical.

23 28. There are questions of law and fact common to all members of the class and each
24 subclass, to wit, whether Defendant unions may constitutionally and lawfully seize the increase
25 in compulsory union dues or fees from the wages of the educators which are to be used primarily
26 for ballot propositions, political activities and other nonbargaining activities without providing
27 all of the procedural safeguards required by the First and Fourteenth Amendments to the United
28 States Constitution to be given all potential objectors.

1 29. The named Plaintiffs' claims are typical of other members of the class and each
2 subclass, who are subject to the same deprivations of their rights by Defendant unions' collection
3 and spending of the increase in compulsory dues and fees, without providing the necessary
4 constitutional safeguards and rights, as hereinafter alleged.

5 30. The named Plaintiffs can adequately represent the interests of the class and each
6 subclass. They have no interests antagonistic to the other members of the class and subclasses,
7 who are all potential objectors entitled to notice and the procedures and safeguards required by
8 the Constitution. Plaintiffs' attorneys are provided by a national charitable legal aid organization
9 and are experienced in representing employees in litigation, including class actions, involving
10 issues identical or similar to those raised in this action. Plaintiffs' attorneys are well qualified to
11 be appointed class counsel by the Court.

12 31. Because the unions' duty not to invade the First Amendment rights of the
13 educators applies equally to all in the class and each subclass, the prosecution of separate actions
14 by individual class member educators would create a risk of inconsistent or varying
15 adjudications which would establish incompatible standards of conduct for Defendant unions.

16 32. The unions have acted and threaten to continue to act to deprive the named
17 Plaintiffs and class members of their constitutional rights on grounds generally applicable to all,
18 thereby making appropriate declaratory, injunctive and other equitable relief with regard to the
19 class, and each subclass, of educators as a whole.

20 33. The questions of law or fact common to the members of the class and subclasses
21 of educators predominate over any questions affecting only individual educators, in that the
22 important and controlling questions of law and fact are common to all educators in the class and
23 subclasses, i.e., whether the unions have complied with the constitutional requirements for
24 collecting from the educators the increase in dues and fees earmarked primarily for ballot
25 propositions, political activities and other nonbargaining activities.

26 34. A class action is superior to other available methods for the fair and efficient
27 adjudication of the controversy, inasmuch as the individual class member educators are deprived
28 of the same rights by Defendant unions' actions and threatened actions. The limited amount of

1 money involved in the case of each educator's claim would make it burdensome for the class, or
2 each subclass, of educators to maintain separate actions.

3 **VII. Facts.**

4 35. On June 11, 2005, the delegates to the State Council of Education of Defendant
5 California Teachers Association ("CTA") voted to assess a \$60.00 annual dues/fees increase for
6 the next three school years – 2005-06 through 2008-09, which represents an 11.257% increase of
7 the 2004-05 dues/fees amount.

8 36. The CTA's \$6.00 per month increase (based on a 10 month dues/fees deduction
9 cycle), which will begin with the September 30, 2005 paycheck, is targeted primarily, if not
10 wholly, to defeat certain ballot propositions in a special election to be held on November 8,
11 2005, fight the Governor's education policies, and take other political and nonbargaining actions.
12 Specifically, the increase will be used to repay a loan CTA had secured to provide it with \$50
13 million that it is using to oppose the Governor of California, various ballot propositions, and take
14 other political and nonbargaining actions.

15 37. On or about May 20, 2005, the delegates to Defendant California Faculty
16 Association's ("CFA") 62nd Assembly voted to increase the dues from .95% to 1.05% of income
17 and the agency fees of nonmembers from .665% to .735% – a 10.526% increase, or an increase
18 of from \$31.50 to \$63.00 per year per individual faculty, depending on the salary amount.

19 38. The CFA's \$2.63 to \$5.25 per month fee increase (based on a 12 month deduction
20 cycle), which began with the July 1, 2005 paycheck, is targeted primarily, if not wholly, to
21 defeat ballot propositions in a special election to be held on November 8, 2005, fight the
22 Governor's education policies, and take other political and nonbargaining actions.

23 39. The CTA opposes Propositions 74, 75, 76 and 77 and supports Propositions 79
24 and 80. The Alliance for a Better California, a coalition of the state's public labor unions, of
25 which CTA is a member which it actively supports, also opposes Proposition 78. Between July
26 1 and September 2, 2005, CTA gave \$10.1 million to the Alliance.

27 40. On September 1, 2005, CTA gave \$21 million to campaigns opposing three
28 propositions on the November 8, 2005 ballot: \$5 million to oppose Proposition 74 (Public

1 School Teachers, Waiting Period for Permanent Status, Dismissal, Initiative Statute); \$8 million
2 to oppose Proposition 75 (Public Employee Union Dues, Required Employee Consent for
3 Political Contributions, Initiative Statute); and \$8 million to oppose Proposition 76 (School
4 Funding, State Spending, Initiative Constitutional Amendment). Prior to September 1, 2005,
5 CTA spent another \$8.2 million on advertising, rallies and other activities aimed at special
6 election and the governor's education policies and budget proposals.

7 41. The CFA opposes Propositions 74, 75, 76, 77 and 78 and supports Propositions
8 79 and 80.

9 42. Between July 1 and September 1, 2005, CFA gave more than \$300,000 to
10 campaigns opposing propositions on the November 8, 2005 ballot, including: \$41,231.99 to
11 oppose Proposition 75 and \$21,231.99 to oppose Proposition 76.

12 43. The Plaintiffs support some or all of the propositions the unions oppose, oppose
13 some or all of the propositions the unions support, and/or do not believe that their dues or forced
14 fees should be used on any ballot proposition and other political and nonbargaining activities.

15 44. The Plaintiffs have a First Amendment right to prevent the increase in their union
16 dues or fees from being used for or against ballot propositions and other political and
17 nonbargaining activities which conflict with their own personal preferences.

18 45. Plaintiffs also have a First Amendment right to adequate procedures which will,
19 among other things, give the educators adequate advance notice of the political and other
20 nonbargaining uses to which the increase in their dues or fees is targeted that allows them to
21 make an informed decision on whether their union dues and fees are (or will be) used for
22 political and other nonbargaining activities which conflict with their own personal preferences so
23 that they can prevent the use of their moneys for ballot propositions and other political and
24 nonbargaining activities that they oppose. This notice is commonly referred to as the "*Hudson*"
25 notice. *See Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986).

26 46. On or before October 15, 2004, the CTA sent out its *Hudson* notice to most of its
27 nonmember teachers. The union did not send any such notice to its member teachers. This
28 notice preceded the decision to impose a three-year political dues/fees increase by approximately

1 eight months, and contained no notice that a political dues and fees increase would be included
2 in the 2005-06 dues and fees.

3 47. The October 15, 2004 notice set the 2004-05 agency fee at 100% of dues. The
4 notice also informed nonmembers that a reduced agency fee of 67% of CTA's annual dues of
5 \$533.00, or \$357.11, would be charged to nonmembers who objected to paying the full agency
6 fee and requested a rebate pursuant to the procedures and deadlines outlined in the notice. The
7 67%, which includes a 5% "cushion," is based on CTA's actual expenditures for the 2002-03
8 year ending August 31, 2003, in which CTA calculated chargeable expenditures to be 72% of its
9 total expenditures.

10 48. On information and belief, the October 15, 2005 notice will set the reduced
11 agency fee to be charged objecting nonmembers during the 2005-06 school year, the first year of
12 the \$60.00 dues/fees increase. The reduced agency fee percentage of CTA's annual dues of at
13 least \$593.00 for 2005-06, an 11.26% increase, will be based on CTA's actual expenditures for
14 the 2003-04 year ending August 31, 2004.

15 49. If the same procedure is used for 2005-06 that was used for 2004-05, the actual
16 reduced agency fee charged objecting nonmembers in 2005-06 will include the 5% "cushion" of
17 \$29.65. However, the 5% "cushion" will not cover the 11.26% increase, and \$30.05 (\$60.00 -
18 \$29.65) of the dues/fees increase will remain and be included in the 2005-06 reduced agency fee
19 charged objecting nonmembers, resulting in a forced loan from them that will be spent on the
20 ballot propositions and other political and nonbargaining activities to which they object.

21 50. CTA's pre-September 1, 2005 spending on the ballot propositions and other
22 political and nonbargaining activities facilitated by the dues/fees increase will not be included in
23 the reduced agency fee percentage until next year, the 2006-07 school year; and the September 1
24 through November 8, 2005 spending on the ballot propositions and other political and
25 nonbargaining activities facilitated by the dues/fees increase will not be included in the reduced
26 agency fee percentage until two years later, the 2007-08 school year.

27 51. On July 29, 2005, Plaintiff Liegmann wrote CTA, objecting to the \$60.00
28 increase in dues/fees for political purposes. She requested confirmation that "this political fee

1 [will not] be deducted from my paycheck” and, if deducted, she requested an immediate “rebate
2 of the full amount.”

3 52. Having not received any response to her letter, Plaintiff Liegmann called the CTA
4 Membership Accounting Department, which handles CTA’s agency fee notices and rebates. On
5 August 16, 2005, she spoke with Nicole Burgoa of that Department, who informed her that the
6 entire \$60.00 increase for the 2005-06 school year would be rebated to her in October 2005,
7 along with the amount of the regular rebate.

8 53. The next day, August 17, 2005, Ms. Burgoa e-mailed Ms. Liegmann to correct the
9 wrong information Ms. Burgoa had given Ms. Liegmann the day before regarding any immediate
10 rebate of the \$60.00 increase. Ms. Burgoa wrote: “I * * * found out that agency fee rebates are
11 based on audits from the previous year. This means the \$60.00 will not be included this year.”

12 54. Then on August 24, 2005, Ms. Liegmann received a letter from Beverly Tucker,
13 CTA Chief Counsel, dated August 23, 2005, responding to Ms. Liegmann’s July 29, 2005 letter.
14 Ms. Tucker’s letter stated: “[I]t is appropriate to include this additional \$60.00 per year in your
15 agency fee obligation.” The letter also explained that CTA “will treat your letter dated July 29,
16 2005 as an advance rebate request and will process it in accordance with CTA’s usual rebate
17 procedures.”

18 55. CTA’s usual agency fee rebate procedures allows CTA to force objecting
19 nonmembers to loan it the increased dues/fees amount to spend on the ballot propositions and
20 other political and nonbargaining activities, which CTA will not begin to repay until a year later
21 and not fully repay until two years later. In addition, CTA’s repayment of the forced loan is
22 contingent upon the nonmember remaining employed by a public school district in a bargaining
23 unit represented by a local affiliate of the CTA.

24 56. On or before January 15, 2005, the CFA sent out its *Hudson* notice to most of its
25 nonmember faculty. The union did not send any such notice to its member faculty. This notice
26 preceded the decision to impose an increase in the compulsory fees by approximately four
27 months, and contained no notice that an increase in the fees to pay primarily, if not wholly, for
28 ballot propositions, political and other nonbargaining activities would be included in the second-

1 half of the 2005 fees.

2 57. Unlike the CTA, the CFA does not require nonmembers to object in order to pay
3 the reduced agency fee. In other words, the CFA considers all nonmembers to be objectors.

4 58. The January 15, 2005 notice set the 2005 agency fee deducted from the wages of
5 all nonmembers at 70% of CFA's annual dues of .95% of salary, which is .665% of salary or
6 \$299.29 to \$598.50 per year. The 70% fee, which includes a 1.62% "cushion," is based on
7 CFA's actual expenditures for the 2003-04 year ending August 31, 2004, in which CFA
8 calculated chargeable expenditures to be 71.62% of its total expenditures.

9 59. Since July 1, 2005, the agency fee deducted from the wages of all nonmembers
10 and transmitted to CFA for its spending has been increased by .07% of salary, a 10.526%
11 increase, or a \$31.50 to \$63.00 per year increase, depending on the nonmember's salary. The
12 actual agency fee now deducted from nonmembers includes the 1.62% "cushion" of \$7.66 to
13 \$15.31 per year. However, the 1.62% "cushion" does not cover the 10.56% increase and \$23.84
14 to \$47.69 of the fee increase remains and is included in the 2005 reduced agency fee being
15 deducted from nonmembers' wages, resulting in a forced loan from them that is being and will
16 continue to be spent by the CFA on the constitutionally nonchargeable ballot propositions and
17 other political and nonbargaining activities.

18 60. Moreover, CFA's pre-September 1, 2005 spending on the ballot propositions and
19 other political and nonbargaining activities facilitated by the fee increase will not be included in
20 setting the new reduced agency fee percentage until 2006, six months after the initial seizures;
21 and the September 1 through November 8, 2005 spending on the ballot propositions and other
22 political and nonbargaining activities facilitated by the fee increase will not be included in
23 setting the new reduced agency fee percentage until 2007, eighteen months later.

24 61. CFA's usual agency fee procedures allows CFA to force nonmembers to loan it
25 the increased fee amount to spend and use on the ballot propositions and other political and
26 nonbargaining activities, which CFA will not begin to "repay" for six months and not fully
27 "repay" until eighteen months after the first seizures. In addition, CFA's repayment of the
28 forced loan is contingent upon the nonmember remaining employed by the California State

1 University in a bargaining unit represented by CFA.

2 62. As a result of the timing of the unions' increase in their dues and fees, the
3 minimum procedures required by the First and Fourteen Amendments to the U.S. Constitution
4 and explained in *Hudson*, have not been provided to the educators and the class they seek to
5 represent, all of whom are potential objectors to the unions' use of the increase in the dues and
6 fees primarily, if not wholly, for ballot propositions, political and other nonbargaining purposes.

7 63. Specifically, the CTA has not provided Plaintiffs Liegmann, Hoover and the other
8 nonmember teachers with notice of the intended use of the fee increase; an opportunity to object
9 to the use of the fee increase on the ballot propositions, politics and other nonbargaining
10 activities; and an immediate refund or reduction of the increased fee amount. Absent such
11 immediate procedural protections, the nonmember teachers are forced to loan the increase in
12 their fees to the CTA for its use and spending on the ballot propositions, politics and other
13 nonbargaining activities which they oppose and which they cannot constitutionally be required
14 to subsidize.

15 64. The CTA has not provided Plaintiff Morin and the other member teachers, who
16 are potential objectors, with notice of the intended use of the dues increase; an opportunity to
17 resign and, as a nonmember, raise an objection to the use of the dues/fee increase on the ballot
18 propositions, politics and other nonbargaining activities; and an immediate refund or reduction
19 of the increased dues/fee amount. Without such immediate procedural protections, the member
20 teachers are forced to loan the increase in their dues to the CTA for its use and spending on the
21 ballot propositions, politics and other nonbargaining activities which the members oppose and
22 which they cannot constitutionally be required to subsidize.

23 65. The CFA has not provided Plaintiffs Lima, Lowenthal and the other nonmember
24 faculty with notice of the intended use of the fee increase and an immediate refund or reduction
25 of the increased fee amount. Without such immediate procedural protections, the nonmember
26 faculty are forced to loan the increase in their fees to the CFA for its use and spending on the
27 ballot propositions, politics and other nonbargaining activities which they cannot constitutionally
28 be required to subsidize and CFA does not require them to support.

1 **VIII. *First Claim for Relief: Constitutionally Adequate Procedures.***

2 66. The forgoing paragraphs are re-alleged.

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

10 68. Under color of state law, the Defendant unions have collected and continue to
11 collect an increase in compulsory dues and fees which the unions have targeted, and will use and
12 spend primarily on the upcoming ballot propositions election and for politics and other
13 nonbargaining activities without first providing the carefully tailored procedures required by the
14 First and Fourteenth Amendments to the U.S. Constitution. This deprives the educators of their
15 constitutional right to due process and proper procedures.

16 **IX. *Second Claim for Relief: Free Speech.***

17 69. Paragraphs 1 through 65 are realleged.

18 70. Under color of state law, the Defendant unions collect and continue to collect an
19 increase in compulsory dues and fees which the unions have targeted, and will use and spend
20 primarily on the upcoming ballot propositions election and for other political and nonbargaining
21 activities contrary to the educators' political preferences.

22 71. Without being provided with an immediate rebate of or reduction in the increase in
23 dues and fees being used and spent on ballot propositions and other political and nonbargaining
24 activities, the objecting educators are being forced to loan the unions their money and are
25 otherwise deprived of their right to free speech, free association and political autonomy under the
26 First Amendment to the U.S. Constitution.

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1 **X. *Prayer for Relief.***

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

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

9 **A. Preliminary Injunction:** Immediately issue, pending a hearing on Plaintiffs'
10 prayer for permanent relief, a preliminary injunction restraining Defendant California Teachers
11 Association, its officers, agents, assistants, successors, employees, attorneys, and all persons
12 acting in concert or cooperating with it or at its direction or under its control, from accepting any
13 payroll deductions or direct payment of the increase in union dues and fees from the wages of any
14 named Plaintiff and any of the class members they represent, from disbursing any of the increase
15 in union dues and fees still in its possession and/or control, and requiring said Defendant to
16 restore the status quo by placing any increase in dues and fees it has received or will receive into
17 the registry of the Court or a Court-supervised escrow account, until further order of the Court;
18 and restraining Defendant California Faculty Association, its officers, agents, assistants,
19 successors, employees, attorneys, and all persons acting in concert or cooperating with it or at its
20 direction or under its control, from accepting any payroll deductions or direct payment of the
21 increase in union fees from the wages of any named Plaintiff and any of the class members they
22 represent, from disbursing any of the increase in union fees still in its possession and/or control,
23 and requiring said Defendant to restore the status quo by placing any increase in fees it has
24 received or will receive into the registry of the Court or a Court-supervised escrow account, until
25 further order of the Court.

26 **B. Class Certification:** Enter an order, as soon as practical, certifying this case as a
27 class action consisting of the class of all individuals who pay compulsory dues or fees to
28 Defendant CTA or compulsory fees to Defendant CFA, as outlined in the four subclasses

1 identified in ¶ 13, *supra*; and appointing Plaintiffs’ counsel as class counsel.

2 **C. Declaratory Judgment:** Enter a declaratory judgment, pursuant to 28 U.S.C.
3 § 2201, declaring:

4 1) that the named Plaintiffs and class members have a constitutional right to
5 an advance “*Hudson*” notice of the increase in the dues and fees to be used, at least in part, in the
6 upcoming ballot proposition special election and for other politics;

7 2) that the named Plaintiffs and class members have a constitutional right to
8 receive advance notice of how they can object to their union dues or fees being used in the
9 upcoming ballot proposition special election and for other politics; and

10 3) that the objectors have a constitutional right to prevent the unions from
11 using and spending the dues/fees increase in the upcoming ballot proposition election and for
12 other politics and from being forced to provide the unions with a loan for political purposes.

13 **D. Permanent Injunction:** Enter a permanent injunction which: i.) restrains the
14 California Teachers Association, its officers, agents, assistants, successors, employees, attorneys,
15 and all persons acting in concert or cooperating with it or at its direction or under its control, to
16 place in escrow all of the money which it has collected or received and will collect or receive
17 from the Plaintiffs and class members as a result of the increase in dues and fees, which it has
18 targeted primarily, if not wholly, for ballot propositions, political activities and other
19 nonbargaining activities into the registry of the Court or a Court-supervised escrow account, until
20 such time as the Court is satisfied that CTA has provided all the necessary pre-collection
21 safeguards and procedures mandated by the Constitution; and ii.) restrains the California Faculty
22 Association, its officers, agents, assistants, successors, employees, attorneys, and all persons
23 acting in concert or cooperating with it or at its direction or under its control, to place in escrow
24 all of the money which it has collected or received and will collect or receive from the Plaintiffs
25 and class members as a result of the increase in fees, which it has targeted primarily, if not
26 wholly, for ballot propositions, political activities and other nonbargaining activities into the
27 registry of the Court or a Court-supervised escrow account, until such time as the Court is
28 satisfied that CFA has provided all the necessary pre-collection safeguards and procedures


1 mandated by the Constitution.

2 **E. Damages:** Award each named Plaintiff and class member compensatory damages
3 or restitution from the appropriate Defendant of the increase in the dues or fees collected and not
4 previously returned, with statutory interest, that has been spent on, or targeted for, ballot
5 propositions, political activities and other nonbargaining activities to which the Plaintiff and class
6 member objects; and nominal damages from the appropriate Defendant for its violations of the
7 Plaintiffs' and class members' rights under the First and Fourteenth Amendments to the United
8 States Constitution.

9 **F. Costs and Attorneys Fees:** Pursuant to the Civil Rights Attorneys' Fees Award
10 Act of 1976, 42 U.S.C. § 1988, award the Plaintiffs their costs, including reasonable attorneys'
11 fees, incurred in the litigation of this case.

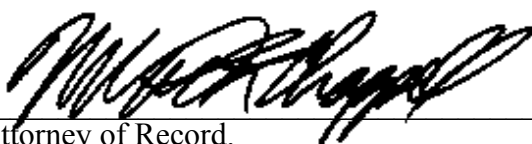
12 **G. Other:** Grant the Plaintiffs such other and further legal or equitable relief as the
13 Court may deem just and proper.

14 Respectfully submitted,

15
16 
17 _____
18 MILTON L. CHAPPELL, Esq. (DCBN 936153)
19 STEVEN R. BURLINGHAM, Esq. (CBN 088544)
20 Attorneys for Plaintiffs LIEGMANN, HOOVER,
21 WORTHINGTON, MORIN, LIMA &
22 LOWENTHAL

21 **Certification of Interested Entities or Persons**

22 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the
23 named parties, there is no such interest to report.

24
25 
26 _____
27 Attorney of Record.

28 DATED: September 22, 2005

1 VERIFICATION OF COMPLAINT

2
3 Anthony Lima, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746, declares
4 as follows:

5 I am named as Plaintiff in the within suit.

6 I have read the foregoing Complaint, and state upon my knowledge, information, and
7 belief that the statements and allegations contained in paragraphs 1-3, 14-15, 21-34, 37-38, 41-
8 45, 56-62, 65-72 are true and correct.

9 As stated more fully in the Complaint, my employer began seizing increased agency fees
10 from my wages on July 1, 2005, for the benefit of Defendant California Faculty Association,
11 notwithstanding the fact that, to the best of my knowledge, information, belief, and recollection,
12 the 10.526% increase in fees will be spent primarily, if not wholly, for ballot propositions,
13 political activities and other nonbargaining activities, I have not been provided with adequate
14 notice of my rights under *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), and the
15 other procedural safeguards required by that case to protect my constitutional right to prevent the
16 CFA from using and spending the increase in the upcoming ballot proposition election and for
17 other politics and from being forced to provide CFA with a loan for political purposes.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on September 9, 2005.

20
21
22 
23 ANTHONY LIMA

1 VERIFICATION OF COMPLAINT

2
3 Caroline Worthington, pursuant to Section 1746 of the Judicial Code, 28 U.S.C. § 1746,
4 declares as follows:

5 I am named as Plaintiff in the within suit.

6 I have read the foregoing Complaint, and state upon my knowledge, information, and
7 belief that the statements and allegations contained in paragraphs 1-3, 11a-11b, 18-20, 24-36, 39-
8 40, 43-50, 55, 62-63, 67-72 are true and correct.

9 As stated more fully in the Complaint, my employer will seize increased agency fees from
10 my wages for the benefit of Defendant California Teachers Association, notwithstanding the fact
11 that, to the best of my knowledge, information, belief, and recollection, the \$60.00 annual
12 increase in fees will be spent primarily, if not wholly, for ballot propositions, political activities
13 and other nonbargaining activities, I have not been provided with adequate notice of my rights
14 under *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986), and the other procedural
15 safeguards required by that case to protect my constitutional right to prevent the CTA from using
16 and spending the \$60.00 increase in the upcoming ballot proposition election and for other
17 politics and from being forced to provide CTA with a loan for political purposes.

18 I declare under penalty of perjury that the foregoing is true and correct.

19 Executed on September 16, 2005.

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CAROLINE WORTHINGTON